

**To:** Dunham, Sarah[Dunham.Sarah@epa.gov]  
**Cc:** Page, Steve[Page.Steve@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]  
**From:** Schmidt, Lorie  
**Sent:** Fri 3/24/2017 12:59:10 PM  
**Subject:** Re: Weekly Report

Thanks

## Ex. 5 - Deliberative Process, Attorney Client

I will have my folks start analyzing this.

Sent from my iPhone

On Mar 24, 2017, at 7:10 AM, Dunham, Sarah <Dunham.Sarah@epa.gov> wrote:

Sent from my iPhone

Begin forwarded message:

**From:** "Coleman, Sam" <Coleman.Sam@epa.gov>  
**Date:** March 23, 2017 at 9:53:50 PM EDT  
**To:** Weekly Report Group <Weekly\_Report\_Group@epa.gov>  
**Cc:** "Dunham, Sarah" <Dunham.Sarah@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Coleman, Sam" <Coleman.Sam@epa.gov>  
**Subject:** Weekly Report

UPCOMING HOT ISSUES AND IMPORTANT DEADLINES

**Texas Reconsideration Petition for SO2 Designations**

# Ex. 5 - Deliberative Process

## Texas Regional Haze Federal Implementation Plan

EPA and TCEQ will meet on March 28 in Austin to develop a pathway to address the Regional Haze Requirements for Electricity Generating Units (power plant units) in Texas. EPA Region 6; Kenneth Wagner, EPA Senior Advisor to the Administrator For Regional and State Affairs; Reed Clay, Deputy Chief of Staff to the Governor and Seven Schar, Natural Resources Policy Advisor will hold a pre-meeting discussion on March 27.

## Arkansas Reconsideration Petition for Regional Haze FIP

On March 7, 2017, DOJ filed with the Eighth Circuit an unopposed motion outlining EPA's intention to grant reconsideration and 90 day stay on the specific portions of the final rule relating to compliance dates for three facilities as a rationale in support of asking the court to grant EPA's request for a 90-day abeyance of the litigation schedule. The court granted it with a status report due on June 9. We have

Ex. 5 - Attorney Work Product, Attorney Client	Ex. 5 - Attorney Work Product, Attorney Client
Ex. 5 - Attorney Work Product, Attorney Client	The documents (letter and FR notice) to effectuate the stay will be put into routing for Administrator consideration on 3/27.

## Arkansas 303d List of Impaired Waters

EPA and ADEQ Director Keogh will meet on March 30 to discuss a series of actions regarding the 2016 list of impaired waters and several backlogged actions dating back to 2010. EPA is proposing to take action on the state's lists for 2010, 2012, 2014 and 2016. EPA and Arkansas are substantially in agreement on most of the impaired waters but have a disagreement on a subset of potentially impaired waters. EPA plans to propose to list 60 additional stream segments and the state is not going to like it. We plan to talk to them one more time before making a final decision the listing but 100%

resolution of differences is unlikely.

## UPCOMING PUBLIC EVENTS

March 30 – Arkansas Environment Federation, Little Rock, AR – Acting RA Coleman is keynote speaker

April 5 – Regional Tribal Operations Committee meeting/Tribal Summit, Dallas, Texas – EPA is co-hosting this event.

April 13 – The City of Houston, the John P. McGovern Museum of Health & Medical Science (The Health Museum) and the EPA will unveil the nation's seventh Village Green Station that monitors air quality and weather conditions during a ribbon cutting ceremony.

April 19-22 – Earth Day Texas. EPA Region 6 will host several booths at this annual event in Dallas.

May 7-9 – Interstate Oil & Gas Compact Commission Business Meeting, Oklahoma City, OK – Region 6 Energy Advisor Lawrence is attending. EPA and IOGCC have a signed Memorandum of Understanding (MOU).

## UPCOMING DECISIONS

Region 6 plans to sign the Federal Register notice to proposed reissuance of the general permit for oil and gas discharges to federal waters in the western Gulf of Mexico next week. This general permit allows approximately 12,000 sources to discharge oil and gas exploration and production wastewaters while protecting water quality in the Gulf. The permit allows dischargers to operate in compliance with the Clean Water Act in an efficient and predictable manner, without having to get an

individual permit for each discharge point. Initiation of public comment on the reissuance process is critical to allowing timely reissuance prior to the expiration of the current permit on September 30, 2017.

#### PAST WEEK ACCOMPLISHMENTS

EPA successfully worked with DOJ to defer collection of stipulated penalties for the City of Ft. Smith, Arkansas, pending review of performance in the next 1-2 years. The city has been under an Administrative Compliance Order for Sanitary Sewer Overflows (SSOs) and taking action to address infrastructure deficiencies. Heavy rains delayed completion of work and contributed to additional SSO overflows during the reporting period.

Samuel Coleman, P. E.,  
Deputy Regional Administrator

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Sent from my iPhone

EPA Region 6 Comments on the Texas Draft Regional Haze SIP  
2/15/08

1. EPA has submitted these comments on the Texas draft Regional Haze State Implementation Plan (RH SIP) with the intention of addressing the more significant issues that could be identified considering the review time available. Due to time, resource constraints, and the fact that the TCEQ has elected not to submit a paper copy of the SIP (which consists of approx. 50 separate electronic files), it has not been possible to conduct a completely thorough review, particularly with regard to modeling. It is possible that additional concerns, not discovered during the review of this draft, will surface during the review of the final version of this SIP.
2. The TCEQ should ensure, with the submittal of the final SIP, it demonstrates it has followed the requirements of Appendix V to Part 51. EPA also suggests that TCEQ edit the paragraph "Public Notice" on page 2.1 to include a reference to Appendix V of Part 51. Lastly, EPA suggests the documentation showing that TCEQ complied with Appendix V of Part 51 be included in SIP Appendix 2-1 ("Public Participation Process") of the final SIP submittal.
3. In general, the TCEQ should ensure that it has specifically addressed each requirement of Section 51.308, even if it feels specific requirements don't apply or appear to be self evident. It is suggested that a checklist be used for this purpose.
4. All graphs and charts originally produced with color coded lines and bars should be reproduced in color, as black and white reproduction does not allow the identification of the individual items. This should be ensured in both printed and electronic versions of the SIP, including all appendices.
5. Appendix 11-1, which is stated on page 11-10 as containing documents related to smoke management, is empty.
6. Display of impacts from Texas sources are divided into 3 separate areas in much of the graphics presented in the SIP, without the more relevant display of impacts from Texas as a whole. Impacts from Texas as a whole should be included in the analysis of impacts on out of state Class I areas.
7. On page 4-2, the TCEQ states, "The TCEQ has determined which states contribute to visibility impairment at the Texas Class I areas by using the results from the CENRAP particulate matter source apportionment technology (PSAT) modeling. These states are New Mexico, Oklahoma, Kansas, and Louisiana." EPA notes the TCEQ has apparently not, as of the writing of this draft SIP, consulted with New Mexico, Louisiana, and Colorado, despite it stating CENRAP modeling shows it impacts the visibility of Class I areas in those States. Under Section 51.308(d)(3), Texas is obligated to consult with those States in order to develop coordinated emission management strategies, as it apparently has emissions that are reasonably anticipated to contribute to visibility

impairment at Class I areas located in those States. Regarding this, the TCEQ should address the following:

- a) The TCEQ should describe how it has met the requirements of Section 51.308(d)(1)(iv), which states, “In developing each reasonable progress goal, the State must consult with those States which may reasonably be anticipated to cause or contribute to visibility impairment in the mandatory Class I Federal area. In any situation in which the State cannot agree with another such State or group of States that a goal provides for reasonable progress, the State must describe in its submittal the actions taken to resolve the disagreement.” EPA is particularly interested in the following:
    - i) Do these States agree with the TCEQ on the level of their apportionments?
    - ii) What, if any, reductions in these States’ sources were negotiated through the consultation process as part of the TCEQ’s reasonable progress strategy.
  - b) The TCEQ should demonstrate, as required under Section 51.308(d)(3)(ii), that it has included in its implementation plan all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for those Class I areas for which it causes or contributes to visibility impairment.
  - c) On page 4-2, the TCEQ states that it attended Oklahoma’s three consultation calls held in August and September 2007. The TCEQ should discuss the results of those calls, including whether Oklahoma requested any additional emission reductions due to Texas’ visibility impacts at the Wichita Mountains Class I area
8. The TCEQ states on page 4-2 that Arkansas and Missouri have begun consultations with Texas about the impact of Texas’ emissions on regional haze at the Class I areas in those States and have accepted Texas’ planned emissions and regional haze impact reductions as adequate for their Class I areas. The TCEQ also states it has begun consultations with Oklahoma concerning its Class I area. Regarding this, the TCEQ should update this information, and show how it has complied with Section 51.308(d)(3)(i) – (iii), including the following:
- a) The TCEQ should demonstrate it has included in its implementation plan all measures necessary to obtain its share of the emission reductions needed to meet the progress goals for the Class I areas it affects.
  - b) The TCEQ should document the technical basis, including modeling, monitoring and emissions information, on which it relies to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I Federal area it affects. If this information is within an appendix, it should be specifically referenced and summarized.
9. The following comments refer to the TCEQ’s calculations on natural visibility:

- a) The TCEQ should provide more detail than is present in Appendix 5-2 on the calculation of the estimate for the refined natural visibility for its two Class I areas. Any data, assumptions, calculations, research, spreadsheets, etc. necessary to replicate the results summarized in Table 5-2 of Appendix 5-2 should be included.
- b) Apparently, the TCEQ assumes major dust events can be assumed to be completely natural in origin, for the purpose of calculating the natural visibility values for its Class I areas. The TCEQ should either provide documentation that supports that assumption, or adopt a lower value that can be supported.
- c) Reviewing Figures 8-4 and 8-5, it appears that on the 20% worst days, wind blown dust (bCM) is much more important to visibility degradation at Guadalupe Mountains than at Big Bend. This conclusion is borne out in a report on dust storms and regional haze<sup>1</sup> prepared by the TCEQ. Near the end of that report is this statement:

“The number of dust storms at BIBE and GUMO do not correlate with each other. ... Because of these differences, the natural conditions for these two sites should be evaluated individually.”

The TCEQ should discuss how that information was considered in the assumptions and calculation of the natural visibility values for each Class I area.

- 10. Regarding its 2018 emission inventory, the TCEQ should discuss the following in the context of its effect on visibility modeling projections:
  - a) How it resolved any significant differences between the actual locations of stationary sources in 2002 and the IPM generated 2018 locations.
  - b) How it resolved any significant differences between the 2002 magnitudes of stationary sources and the IPM generated 2018 magnitudes.
  - c) Does the 2018 total electrical generating capacity appear to be reasonable, when compared to that in 2002?
  - d) Does the mix of electrical generating capacity (gas versus coal plus renewables) as projected in 2018 appear reasonable when compared to that in 2002.
  - e) Why, as discussed on page 8-16, have emissions associated with off-shore marine and oil and gas production activities been held constant? Has the TCEQ verified this is a reasonable assumption with the Minerals Management Service?
- 11. On page 7-1, the TCEQ states the SO<sub>2</sub> emissions modeled by the CENRAP are significantly higher than the 15,633 tpy reported by Texas, and that it is working with

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<sup>1</sup> Dust Storms and Regional Haze, June 2007,  
[http://www.tceq.state.tx.us/assets/public/implementation/air/sip/bart/haze\\_sip-dust\\_storms.pdf](http://www.tceq.state.tx.us/assets/public/implementation/air/sip/bart/haze_sip-dust_storms.pdf)

CENRAP to correct this error for future modeling. Regarding this, the TCEQ should address the following:

- a) The TCEQ should provide more detail on the differences between the two inventory versions and why it feels the CENRAP-generated SO<sub>2</sub> inventory is incorrect.
  - b) The TCEQ concludes this discussion by stating, “CENRAP’s modeled emissions estimate is not expected to significantly impact visibility estimates for 2018 because of the relatively small contribution from these Texas sources on Class I areas.” Considering other comments herein concerning the impact of Texas sources on other States’ Class I areas, EPA suggests the TCEQ clarify this statement.
12. Figures 8-4 and 8-5 display the observed and modeled light extinction on the worst 20% days for 2002 for Big Bend and Guadalupe Mountains. The following comments pertain to these figures:
- a) It appears the modeled values severely under-predict the observed values in most cases for both total magnitude and SO<sub>4</sub>. The TCEQ should discuss how this level of model performance affects its regional haze SIP. EPA is particularly interested in how this may have affected the TCEQ’s reasonable progress demonstration.
  - b) It appears that SO<sub>4</sub> is in most instances the predominant controllable pollutant. The TCEQ should discuss how this has informed its reasonable progress and long term strategy.
13. Section 51.308(d)(2)(i) requires the TCEQ construct baseline visibility conditions for the most impaired and least impaired days, using 2000 to 2004 data. The TCEQ presents this information in Table 5-1. However, the TCEQ should explain why the baseline average for Big Bend does not include data from 2000.
14. Section 51.308(d)(4)(v) requires the TCEQ submit an emissions inventory that must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. The TCEQ has supplied an inventory for the baseline year, and for 2018. EPA understands that the TCEQ has emission inventory data available for 2005 and requests that it be included in the SIP. The preamble to the 1999 Regional Haze Rule (64 FR 35745) clarifies EPA authority for requiring the emission inventory of the "most recent year for which data are available," under 51.308(d)(4)(v):
- a) "Requirements Under Section 110(a)(2) of the CAA. Visibility SIP submittals must document certain program infrastructure capabilities consistent with the requirements of section 169B(e)(2) and section 110(a)(2) of the CAA. Section 169(B)(e)(2) requires States to revise their section 110 SIPs to “contain such emission limits, schedules of compliance, and other measures as may be necessary” to carry out regulations promulgated pursuant to this section. The EPA believes that this language authorizes EPA to ensure that States review their existing program



infrastructures to ensure that the types of elements required by section 110(a)(2) for programs addressing the NAAQS are also sufficient for adoption and implementation of SIP measures for regional haze. The final rule does not include specific provisions addressing all elements of section 110(a)(2). However, section 51.308(d)(4)(iv) of the final rule requires the State to maintain and update periodically a statewide inventory of emissions of pollutants that contribute to visibility impairment. Where a State is also revising its SIP to incorporate changes to address the PM2.5 NAAQS, many of these revisions may be sufficient to address both PM2.5 and regional haze. The EPA encourages States to consider the needs of both programs when updating the provisions required by section 110 of the CAA to minimize any administrative burdens."

EPA requests that the TCEQ contrast its 2005 emission inventory with that from its baseline year of 2002, and 2018, in order to serve as a check of the EI projection methodology.

15. As required by Section 51.308(d)(4)(v), the TCEQ should include in its SIP a commitment to update the emission inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in its Class I areas periodically.
16. On Page 9-1, the TCEQ states it reviewed its emission inventory data and used the EPA's model plants as an initial screening tool for identifying potentially BART-eligible sources, and that surveys were sent to approximately 250 potentially BART-eligible sources. Regarding this, the TCEQ should address the following:
  - a) The TCEQ should present additional detail on the methodology used to identify the initial list of potentially BART eligible sources that received surveys. For instance, was a permit review part of this strategy? How did the TCEQ determine if particular sources were in one of the 26 BART categories; had a potential to emit of 250 tons per year or more of any visibility-impairing pollutant; and were not operating prior to August 7, 1962, and were in existence on August 7, 1977? This should include a discussion of the sources discussed in Section 9-5, which were exempted from BART eligibility through the TCEQ BART Rule.
  - b) The TCEQ should present additional information that demonstrates this strategy effectively captured all potentially BART eligible sources within the State.
17. The TCEQ concludes on page 9-10 that of the approximately 250 potentially BART eligible sources in the State, none are subject to BART. As discussed elsewhere in these comments, Texas sources significantly contribute to visibility degradation to a number of Class I areas in other States, in some cases more than the host State. As a result, it is unclear how this decision is "reasonable" under Section 51.308(e), which requires, "The State must submit an implementation plan containing emission limitations representing BART and schedules for compliance with BART for each BART eligible source that may reasonably be anticipated to cause or contribute to any impairment of visibility in any

mandatory Class I Federal area.” In light of this, EPA feels the TCEQ should reconsider its decision to select a BART contribution threshold of 0.5 dv. As discussed in the BART rule (70 FR 39161):

“In setting a threshold for “contribution,” you should consider the number of emissions sources affecting the Class I areas at issue and the magnitude of the individual sources’ impacts. In general, a larger number of sources causing impacts in a Class I area may warrant a lower contribution threshold. States remain free to use a threshold lower than 0.5 deciviews if they conclude that the location of a large number of BART-eligible sources within the State and in proximity to a Class I area justify this approach.”

18. In establishing its reasonable progress goals, Section 51.308(d)(1)(i)(A), requires the TCEQ “consider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting the goal.” The following comments address the TCEQ reasonable progress demonstration:
  - a) Table 4 of Appendix 10-1 summarizes the estimated annualized costs for SO<sub>2</sub> and NO<sub>x</sub> controls on 24 sources. The TCEQ should provide a detailed cost accounting for the figures on Table 4.
  - b) It appears Tables 8, 9, and 10 of Appendix 10-1 have been truncated.
  - c) The TCEQ takes the position that even if over \$300M was spent on SO<sub>2</sub> and NO<sub>x</sub> controls at the 24 sources, only 0.05 deciview (dv) improvement would be seen at Big Bend and Guadalupe Mountains. EPA notes this simple assessment does not consider:
    - i) The average cost of SO<sub>2</sub> control is approximately \$1,850 per ton. Considering that SO<sub>4</sub> is the dominant controllable pollutant the TCEQ indicates causes or contributes to visibility impairment (Figures 8-4 and 8-5), the TCEQ should reconsider this assessment.
    - ii) This dollar per dv calculation only considers improvement at Big Bend and Guadalupe Mountains. Under Section 51.308(d)(3)(ii), the TCEQ must demonstrate it has included all measures necessary to obtain its share of the emission reductions needed to meet the progress goal of Class I areas in other States as well. As information in Appendix 10-2 indicates, the visibility improvement that would have occurred as a result of these controls at the Wichita Mountains Class I area in Oklahoma is much greater than the Texas Class I areas. In addition, Section 5.4.3 of Appendix 8-1 (the Technical Support Document) notes that sources in Texas significantly contribute to visibility impairment to Caney Creek in Arkansas and the Wichita Mountains in Oklahoma. In fact, according to information in Appendix E to Appendix 8-1, Texas sources

contributed more to the visibility problem at Caney Creek and the Wichita Mountains in 2002 than did Arkansas and Oklahoma sources, respectively, and are projected to repeat that contribution in 2018. Information presented in Chapter 11 also indicates, with the exception of coarse mass, Texas sources exceed the contributions of New Mexico sources to the visibility degradation of the Salt Creek Class I area in New Mexico.

- iii) An evaluation on a “QBase/5d” can be conducted but Q/D analyses are sensitive to the meteorology that impacts the transport and may not yield a conservative analysis. For example if the source modeled is not upwind (and the source does not transport directly to the Class I area frequently), the analysis would not be conservative to evaluate another source that is upwind of the Class I area more frequently. Please expand this issue so that it is clear that the analysis for all sources is a conservative assessment.
- d) On page 10-3, the TCEQ states regarding its reasonable progress goal, “These RPGs do not include additional emissions reductions from implementing the Texas BART rule ....” The TCEQ should discuss what emissions reductions resulted from its BART rule.
- e) On page 10-5, the TCEQ states, “The potential over prediction of EGU emissions on Class I areas by the IPM model analysis [sic]. This uncertainty in the impact of the CAIR program is one reason why the agency has elected not to pursue additional controls at this time.” EPA stresses that there is no provision in the regional haze rule for delaying potentially cost effective controls due to modeling uncertainty. EPA further notes, within Section C.5.9 (Appendix C) of Appendix 8-1 (the Technical Support Document) appears the statement:

“The observed extinction on the worst 20 percent days at BIBE [Big Bend] is under-predicted on almost every day resulting in a fractional bias value of -72% (Figure 3-17). Every component of extinction is underestimated on average for the worst 20 percent days (Figure C-56) with the underestimation bias ranging from -24% (OMC) to -162% (CM). SO<sub>4</sub> extinction, that typically represents the largest component of the total extinction is understated by -94%.”

The relevance of this information is summarized in Section C.6:

“Performance at the BRET, BIBE [Big Bend] and GUMO [Guadalupe Mountains] Class I areas for the worst 20 percent days is particularly suspect and care should be taken in the interpretation of the visibility projections at these three Class I areas.”

Consequently, based on an initial review, it would appear the actual rate of progress of the Texas SIP relative to the uniform rate of progress may in fact be much less than the TCEQ projects.

Considering comments a) through e), above, it is unclear how the SIP meets the reasonable progress and long term strategy requirements in Sections 51.308(d), and 51.308(d)(3) which state, respectively:

“The State must address regional haze in each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State which may be affected by emissions from within the State.”

“Each State listed in § 51.300(b)(3) must submit a long-term strategy that addresses regional haze visibility impairment for each mandatory Class I Federal area within the State and for each mandatory Class I Federal area located outside the State which may be affected by emissions from the State.”

19. EPA Region 6 has submitted a general comments on the Texas BART analysis with the intention of addressing the more significant issues that could be identified considering the review time available. EPA was involved in review of much of the CAMx modeling done for screening out sources, but due to time and resource constraints, EPA has not been possible to conduct a completely thorough review, particularly with regard to modeling. It is possible that additional concerns, not discovered during the review of this draft, will surface during the review of the final version of this SIP. In Section 9 it is difficult to review how each of the BART eligible sources were screened out. Further documentation and building of a cross-walk to help demonstrate what modeling was used to screen-out each source should be included.

20. On page 11-3, the TCEQ states:

“The TCEQ ... [determined] that Kansas, Louisiana, New Mexico, and Oklahoma contribute to visibility impairment at Texas’ Class I areas. Since each state is considering which additional emissions reductions are reasonable under the factors listed in 40 CFR §51.308(d)(1), Reasonable Progress Goals, the commission has made a preliminary determination that the emissions reductions that these states are projecting are reasonable for contributing to reasonable progress in reducing their contributions to visibility impairment at Texas’ two Class I areas.”

Since it doesn’t appear at the time of the writing of this SIP the TCEQ knew the extent of reductions in those states, it should explain how it determined those reductions were adequate.

21. On 2/13/08, the TCEQ approved the renewal of Air Quality Permit No. 20345 by ASARCO Incorporated. EPA is concerned about the potential of this facility to affect visibility for Texas and New Mexico Class I areas. The TCEQ should ensure that with the final submittal of this SIP, it has (1) assessed BART for this facility; and (2) included this facility in its reasonable progress analysis and long term strategy, including 2018 projections.

**From:** Loving, Shanita

**Location:** WJC-N 5400 + Video with RTP + Ex. 6 - Personal Privacy **Participant Code:** Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** Recommendations for Texas BART FIP

**Start Date/Time:** Fri 11/18/2016 3:00:00 PM

**End Date/Time:** Fri 11/18/2016 4:00:00 PM

[Recommendations for Texas BART FIP briefing sheet 11-8-16.docx](#)

**To:** Curry, Ron; Coleman, Sam; Stenger, Wren; Hansen, Mark; Donaldson, Guy; Kordzi, Joe; Feldman, Michael; Snyder, Erik; Smith, Suzanne; Thomas, Carrie; Payne, James; Tomasovic, Brian; Koerber, Mike; Wood, Anna; Kornylak, Vera S.; Lorang, Phil; Beaver, Melinda; Werner, Christopher; Jones, Rhea; Schmidt, Lorie; Smith, Kristi; Marks, Matthew; Anderson, Lea; McGee, Tomika

**Cc:** Alston, Lala; Sanders, Maria

## ARLO Deadline Calendar for the Week of January 30, 2017

### **NEW CASES, NOTICES OF CITIZEN SUIT, and PETITIONS NEW CASES**

#### **NEW CASES**

- National Environmental Development Association's Clean Air Project v. EPA, No. 17-1016 (D.C. Cir.) and Air Permitting Forum v. EPA, No. 17-1017 (D.C. Cir.) (Melina Williams)
- Mexichem Fluor, Inc., et al. v. EPA, No. 17-1024 (D.C. Cir.) (challenge by a foreign chemical supplier to the 2016 Section 612 Significant New Alternatives Policy (“SNAP”) Rule which, among other things, changed the listing of certain high global warming potential substitutes for ozone-depleting substances from acceptable to unacceptable) (Jan Tierney)

#### **NOTICES OF CITIZEN SUIT**

#### **PETITIONS**

- Petition for Reconsideration of greenhouse gas reporting program rule on leak detection methodology for petroleum and natural gas systems (81 FR 86490, Nov. 30, 2016) (Andrea Carrillo)

#### **NEW DECISIONS and SETTLEMENTS**

### **UPCOMING LITIGATION and COURT-ORDERED AND RELATED DEADLINES**

#### **A. UPCOMING LITIGATION DEADLINES**

2017

- 01/30 Deferred Appendix  
State of North Dakota v. EPA, No. 15-1381 (DC Cir.) (EGU GHG 111(b) CHALLENGE - LEAD CASE - Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units) (Scott Jordan)
- 01/31 Case management statement  
Kelsey Cascadia Rose Juliana, et al. v. United States, et al., No. 6:15-cv-01517 (D. Ore.) (suit on behalf of children alleging that the federal government’s actions supporting the use of fossil fuels, and insufficient actions to address climate change, are unconstitutional under both the Due Process Clause’s “state-created danger doctrine” and a federal “public trust doctrine”) (Zach Pilchen)
- 01/31 Certified index of administrative record  
Southern Illinois Power Cooperative v. EPA, No. 16-3398 (7th Cir.) (industry challenge to our 2016 designations for the 2010 S02 NAAQS) (Andrea Carrillo)

- 02/01 Status Report  
Aero MACT Group v. EPA, No. 16-1040 (D.C. Cir.) (industry challenge to the health risk and technology review for the air toxics standards for aerospace manufacturing and rework facilities) (Winnie Okoye)
- 02/02 Hearing  
Blue Ridge Environmental Defense League, et al. v. EPA, No. 1:16-cv-00364 (D. D.C.) (deadline suit filed by multiple environmental advocacy groups challenging our failure to meet statutory deadlines for reviewing and, if appropriate, revising air toxics standards for 13 categories of major stationary sources of air toxics) (Jan Tierney)
- 02/02 Proposed Briefing Formats  
National Waste & Recycling Association, et al., v. EPA, No. 16-1371 (consolidated with No. 16-1374) (D. C. Cir.) (petition for review of EPA's final action updating the new source performance standards (NSPS) for Municipal Solid Waste Landfills,) (Rick Vetter)
- 02/02 Status Report  
Gas Processors Association v. EPA, No. 11-1023 (D.C. Cir.) (industry petition for review of EPA's final rule entitled 'Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas System') (Andrea Carrillo)
- 02/02 Mediation Conference  
HollyFrontier Refining And Marketing, LLC et al. v. EPA, No. 16-9564 (10th Cir.) (challenge to EPA's denial of HollyFrontier's 2015 small refinery petition for an exemption from its 2015 Renewable Fuel Standard obligations) (Susan Stahle)
- 02/03 Proposed Briefing Format and Schedule  
American Petroleum Institute v. EPA, No. 13-1108 (D.C. Cir.) (Industry and aligned states filed petition for review of EPA's 2012 and 2016 Oil and Gas New Source Performance Standards) (Amy Huang Branning)
- 02/06 Response to petitioner comments on settlement agreement (date recommended by DOJ)  
ArcelorMittal Burns Harbor LLC v. EPA (14-1412, 7<sup>th</sup> Cir.) (challenge by steel company to EPA's disapproval of Indiana state implementation plan (SIP) provision removing SO2 emission limits for a blast furnace flare at ArcelorMittal's Burns Harbor, Indiana, facility) (Susmita Dubey and Mike Thrift)
- 02/06 Final Briefs to add citations  
State of North Dakota v. EPA, No. 15-1381 (DC Cir.) (EGU GHG 111(b) CHALLENGE - LEAD CASE - Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units.") (Scott Jordan)
- 02/06 Deferred Appendix  
State of Delaware v. EPA, No. 16-1230 (D.C. Cir.) (a case challenging EPA's approval

- of extension of attainment date for the 2008 ozone NAAQS for the Philadelphia multi-state nonattainment area) (Derek Mills)
- 02/07 Status Report  
EIP, et al. v. McCarthy, No. 1:16-cv-01643-CRC (D.D.C.) (“Morgantown”) (complaint to enforce mandatory duty to respond to petition objecting to Title V permit) (Charles Starrs)
- 02/07 Pre-trial hearing  
Kelsey Cascadia Rose Juliana, et al. v. United States, et al., No. 6:15-cv-01517 (D. Ore.) (lawsuit on behalf of children alleging that the federal government’s actions supporting the use of fossil fuels, and insufficient actions to address climate change, are unconstitutional under both the Due Process Clause’s “state-created danger doctrine” and a federal “public trust doctrine”) (Zach Pilchen)
- 02/07 Deferred Joint Appendix  
Americans for Clean Energy, et al. v. EPA, No. 16-1005 and consolidated cases (DC Cir.) (petition for review of EPA’s final rule entitled "Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017") (Roland Dubois)
- 02/08 Status Report Due  
Georgia-Pacific, LLC et al v. USEPA, Nos. 14-1267, 14-1269 (D.C. Cir.) (petitions for review of EPA final revisions to national emission standards for hazardous air pollutants (NESHAP): generic maximum achievable control technology standards; and manufacture of amino/phenolic resins (P&R III) (Mike Thrift)
- 02/08 EPA Reply in support of motion to dismiss or transfer  
Cedar Falls Utilities v. EPA, No. 16-4504 (8th Cir.) (Petition for review filed by industry challenger of EPA’s final action promulgating federal implementation plans to address the good neighbor provision for the 2008 ozone NAAQS entitled "Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS") (Stephanie Hogan)
- 02/08 Response to request for fees  
Murray Energy v. EPA, 5:14-CV-39 (N.D. W.V)
- 02/09 Status Report  
Luminant Generation Co. LLC et al. v. EPA, No. 16-9508 (10th Cir.) (Challenges by industry and the State of Texas of EPA’s final action approving in part and disapproving in part of SIPs and implementing FIPs addressing Regional Haze requirements in Oklahoma and Texas, including control requirements for power plants in Texas) (Matthew Marks)
- 02/10 Oral argument  
Sierra Club v. EPA, No. 15-1246 (DC Cir.) (environmental advocacy groups challenge to EPA’s determination that it completed its standard setting obligation under Clean Air Act section 112(c)(6)). (Amy Branning)



- 02/10 Status Report  
Portland Cement Association v. U.S. EPA, No. 15-cv-1310 (D.C. Cir.) (industry challenge to a revision to performance specification 18 (PS-18) which establishes performance specifications and test procedures for gaseous hydrogen chloride continuous emission monitoring systems at stationary sources including power plants)
- 02/13 EPA's Opening Brief  
Murray Energy Corp. v. EPA, No. 16-2432 (4th Cir.) (appeal of adverse decision in Section 321(a) litigation) (Matthew Marks)
- 02/14 Oral argument  
Wild Equity Institute v. EPA, No. 15-17502 (9th Cir.) (environmental group appeal of district court's dismissal of case alleging EPA failure to reinstate Endangered Species Act (ESA) consultation on construction of a natural gas-fired power plant in California called the Gateway Generating Station) (Julie Walters, Region 9 ORC)
- 02/14 Oral argument  
Wild Equity Institute et al. v. EPA, No. 15-70199 (9th Cir.) (environmental groups' petition for review of EPA's final action denying group's "Petition on Clean Air Act Title V Permit; Gateway Generating Station; Antioch; CA") (Jonathan Skinner-Thompson)
- 02/14 Status Reports  
American Petroleum Institute, et al. v. EPA, Case No. 08-1277 (DC Cir.) (consolidated challenges to EPA's 2008 final rule entitled Standards of Performance for Petroleum Refineries) (Derek Mills)
- 02/14 Final Briefs (with cites to deferred appendix)  
Americans for Clean Energy, et al. v. EPA, No. 16-1005 (DC Cir.) (petition for review of EPA's final rule entitled "Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017") (Roland Dubois)
- 02/16 Joint Status Report  
American Chemistry Council v. EPA, No. 15-1146 (D.C. Cir.) (Petition for review of EPA's final rule entitled "National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations") (Emily Seidman)
- 02/16 Status Report  
National Parks Conservation Association, et al. v. EPA, No. 12-4316 (2d Cir.) (Challenge by environmental groups of EPA's final action addressing Regional Haze requirements in New York, including control requirements for a specific power plant) (Matthew Marks)
- 02/16 Status Report  
American Forest & Paper Association, Inc. v. EPA, No. 09-1312 (D.C. Cir.) (Petition for review of EPA's final air toxics rule for the pulp and paper production source category) (Scott Jordan)

- 02/16 Status Report  
American Forest & Paper Association; Inc. v. EPA, No. 09-1311 (D.C. Cir.) (PULP AND PAPER MACT SUBPART MM CHALLENGE — Petition for review of EPA’s final air toxics rule for chemical recovery combustion sources at pulp mills) (Scott Jordan)
- 02/17 Oral Argument  
Mexichem Fluor; Inc., et al. v. EPA, No. 15-1328 (D.C. Cir.) (challenge by two foreign chemical suppliers to the 2015 Section 612 Significant New Alternatives Policy (“SNAP”) Status Change Rule which changed the listing of certain high global warming potential substitutes for ozone-depleting substances from acceptable to unacceptable) (Jan Tierney)
- 02/20 Case Management Statement  
Center for Biological Diversity v. McCarthy, No. 4:16-cv-05492-DMR (N.D. Cal.) (deadline suit brought by environmental group to address state implementation of multiple fine particulate matter (PM2.5) national ambient air quality standards) (Jonathan Skinner-Thompson)
- 02/21 Final Briefs  
State of Delaware v. EPA, No. 16-1230 (D.C. Cir.) (a case challenging EPA’s approval of extension of attainment date for the 2008 ozone NAAQS for the Philadelphia multi-state nonattainment area) (Derek Mills)
- 02/22 EPA Reply in Support of Motion for Summary Judgment/Cross-Motion for Summary Judgment  
Sierra Club v. EPA, No. 3:15-cv-4328 (N.D. Cal.) (failure to promulgate 2008 ozone transport FIP for Kentucky) (Zach Pilchen, Stephanie Hogan)
- 02/22 Procedural Motions  
Truck Trailer Manufacturers Association v. EPA, No. 16-1430 (DC Cir.) (petition for review of EPA’s final rule “Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2”) (Mark Kataoka)
- 02/22 Motions to Govern Further Proceedings  
Compsys v. EPA (challenge to the Significant New Alternatives Policy (“SNAP”) Status Change Rule) (Jan Tierney)
- 02/24 Entry of Appearance Form and Procedural Motions  
State of North Dakota v. EPA, No. 17-1014 (D.C. Cir.) (Petition for review of EPA’s final action denying petitions for reconsideration of Clean Power Plan, entitled, “Denial of Reconsideration and Administrative Stay of the Emission Guidelines for Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating”) (Nora Greenglass, Scott Jordan)
- 02/25 Answer due  
Sierra Club v. EPA, No. 1:16-cv-02461 (D. DC) (deadline suit concerning Clean Air Act deadlines related to Commercial and Industrial Solid Waste Incinerators and other

categories of Solid Waste Incinerators) (Karen Bianco)

- 02/27 Case Management Conference  
Center for Biological Diversity v. McCarthy, No. 4:16-cv-05492-DMR (N.D. Cal.)  
(deadline suit brought by environmental group to address state implementation of multiple fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards) (Jonathan Skinner-Thompson)
- 02/27 Status report  
Felman Prod. v. EPA, No. 15-1296 (D.C. Cir.) (consolidated with Eramet v. EPA, No. 15-1298 (industry challenges to the health risk and technology review for the air toxics standards for the ferroalloy manufacturing industry)
- 02/27 Status Report  
Wisconsin Public Service Corporation v. EPA, No. 12-1163 (D.C. Cir.) (Petition for Review of TR Revisions Rule (Feb.): final rule entitled “Revisions to Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone”) (Kaytrue Ting, Stephanie Hogan)
- 02/27 Status Report  
Utility Air Regulatory Group v. EPA, No. 12-1346 (D.C. Cir.) (petition for review of EPA’s final rule entitled “Revisions to Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone.”) (Kaytrue Ting, Stephanie Hogan)
- 02/28 Region 8 Response to Petition  
In re: Ponderosa Compressor Station, No. 16-02 (petition for review of the Tribal Minor New Source Review Permit issued to TLLP for the Ponderosa Compressor Station) (Brian Doster)
- 03/01 Status Report  
American Fuel & Petrochemical Manufacturers, et al. v. EPA, No. 12-1249 (DC Cir.)  
(Response to petition for reconsideration of 2011 cellulosic biofuel standard and response to petition for waiver of 2011 cellulosic biofuel standard) (Roland Dubois)
- 03/01 Response Brief  
Robert Ukeiley v. EPA, No. 16-9556 (10th Cir.) (Petition for review of final action approving Colorado's PM<sub>10</sub> maintenance plan) (Jonathan Skinner-Thompson)
- 03/06 EPA's Brief  
State of Texas, et al. v. EPA, No. 16-60670 (5th Cir.) (petition for review of EPA’s final action titled “Approval and Promulgation of Air Quality Implementation Plans; Texas; Interstate Transport of Air Pollution for the 2008 Ozone National Ambient Air Quality Standards” at 81 Fed. Reg. 53,284 (August 12, 2016)) (extension of deadline anticipated) (Abi Vijayan)
- 03/06 Oral Argument Format Proposals Filing Date

State of North Dakota v. EPA, No. 15-1381 (DC Cir.) (EGU GHG 111(b) CHALLENGE - LEAD CASE - Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units.") (Scott Jordan)

- 03/06 Status Report  
National Alliance of Forest Owners, et al. v. EPA, No. 10-1209 (D.C. Cir.)  
(NAFO/AFPA PETITION RE BIOGENIC EMISSIONS UNDER TAILORING RULE - Challenge to EPA's treatment of Biogenic Emissions in Tailoring Rule,) (Nora Greenglass)
- 03/07 Status Report  
American Chemistry Council v. EPA, No. 14-1083 (consolidated with 14-1084) (D.C. Cir.) (petition for review of polymers & resins group IV RTR) (Mike Thrift)
- 03/07 Status Report  
National Parks Conservation Association, et al. v. EPA, No. 12-2300 (4th Cir.) (petitions for review of EPA's approval of Virginia's and West Virginia's Regional Haze SIPs based on "arising after" claims following remand of CSAPR) (Lea Anderson)
- 03/08 Status Report  
NRDC v. EPA, No. 04-1048 (D.C. Cir.) (petition for review of mercury cell chlor-alkali MACT) (Mike Thrift)
- 03/08 Certified Index to the Record and Dispositive Motions  
Truck Trailer Manufacturers Association v. EPA, No. 16-1430 (DC Cir.) (petition for review of EPA's final rule "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2") (Mark Kataoka)
- 03/08 Filing re organization of oral argument  
Murray Energy Corporation v. EPA, No. 15-1385 (DC Cir.) (Petition for review of EPA's final action titled "National Ambient Air Quality Standards for Ozone") (Melina Williams)
- 03/09 Hearing  
Sierra Club v. EPA, No. 3:15-cv-4328 (N.D. Cal.) (failure to promulgate 2008 ozone transport FIP for Kentucky) (Zach Pilchen, Stephanie Hogan)
- 03/09 Status Report  
Luminant Generation Co. LLC et al. v. EPA, No. 16-9508 (10th Cir.) (Petition for review of EPA's final action titled "Approval and Promulgation of Implementation Plans; Texas and Oklahoma; Regional Haze State Implementation Plans; Interstate Visibility Transport State Implementation Plan to Address Pollution Affecting Visibility and Regional Haze; Federal Implementation Plan for Regional Haze; Final Rule,") (Matthew Marks)
- 03/10 Deferred appendix

Murray Energy Corp. v. EPA, No. 16-1127 (D.C. Cir.) (petition for review of EPA's final action entitled "Supplemental Finding that it is Appropriate and Necessary to Regulate Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units) (Karen Bianco)

- 03/12 Status Report  
Fertilizer Institute v. EPA, No. 15-1352 (D.C. Cir.) (consolidated with 15-1353) (industry challenges the health risk and technology review for the air toxics standards for the phosphoric acid production and phosphate fertilizer manufacturing industries)
- 03/12 Status Report  
Utility Air Regulatory Group v. EPA, No. 04-1076 (Petition for review of an amendment to the new source performance standards monitoring and quality assurance requirements to add performance specification ("PS-11") and quality assurance procedure ("Procedure 2") for particulate matter continuous emissions monitoring systems.
- 03/13 EPA Brief and Appendix for Motion to Dismiss or Transfer  
Southern Illinois Power Cooperative v. EPA, No. 16-3398 (7th Cir.) (Petition for review of the Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard-Round 2) (Andrea Carrillo)
- 03/13 Status Report  
American Petroleum Institute v. EPA, No. 15-1020 (DC Cir.) (Petition for Review of "Greenhouse Gas Reporting rule: 2014 Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems,") (Andrea Carrillo)
- 03/13 Status Report  
Conservation Law Foundation, et al. v. EPA, No. 13-1233 (DC Cir.) (Petition for Review of emergency engine provisions allowing 50 hours of operation for local reliability in the Final Rule, National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines. Court granted EPA's motion for voluntary remand with status reports due every 90 days) (Sheila Igoe)
- 03/13 Certified Index to the Record and Dispositive Motions  
State of North Dakota v. EPA, No. 17-1014 (D.C. Cir.) Petition for review of EPA's final action denying petitions for reconsideration of Clean Power Plan, entitled, "Denial of Reconsideration and Administrative Stay of the Emission Guidelines for Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating") (Nora Greenglass, Scott Jordan)
- 03/14 Status Report  
American Fuel & Petrochemical Manufacturer's Assoc v. EPA, No. 16-1033 (DC Cir.) (Petition to review a final action of EPA's entitled "Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards,") (Jan Tierney)
- 03/14 Status Report

Biogenic CO2 Coalition v. EPA, No. 16-1358 (DC Cir.) (challenge to endangerment finding for GHG from aircraft) (Melina Williams)

03/16 Oral Argument

Sierra Club, et al. v. EPA, No. 15-15894 (9th Cir) (states' challenge to Dist. Ct.'s entry of CD compelling SO2 NAAQS designations; on appeal from No. 13-cv-03953-SI (N.D. Cal.)) (Mike Thrift)

03/17 EPA's Response Brief

Cliffs Natural Resources, Inc. v. EPA, No. 16-2643 (8th Cir.) (Petition for review challenging the revised taconite FIP) (Matthew Marks)

03/17 EPA's Brief

ArcelorMittal USA, LLC v. EPA, No. 16-2653 (8th Cir.) (Petition for review of EPA's final action titled "Air Plan Approval, Minnesota and Michigan, Revision to 2013 Taconite Federal Implementation Plan Establishing BART for Taconite Plants,") (Matthew Marks)

03/17 EPA's Brief

United States Steel Corporation v. EPA, No. 16-2668 (8th Cir.) (Petition for review of EPA's final action titled "Air Plan Approval, Minnesota and Michigan, Revision to 2013 Taconite Federal Implementation Plan Establishing BART for Taconite Plants,") (Matthew Marks)

03/18 Motion to Govern

American Petroleum Institute, et al. v. EPA, No. 12-1442 (D.C. Cir) (Industry challenge to EPA's final 2012 rule entitled "Standards of Performance for Petroleum Refineries; Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007") (Derek Mills)

03/20 Status Report

Texas et al. v. EPA, No. 16-1078 (D.C. Cir.) (Petition for review of EPA's final action titled "Approval and Promulgation of Implementation Plans, Texas and Oklahoma; Regional Haze State Implementation Plans, Interstate Visibility Transport State Implementation Plan to Address Pollution Affecting Visibility and Regional Haze; Federal Implementation Plan for Regional Haze, Final Rule,") (Matthew Marks)

03/20 Status Report

Alon Refining Krotz Springs, Inc., et al. v. EPA, No. 16-1052 (DC Cir.) (petition for review of EPA's rule entitled EPA, Regulation of Fuels and Additives: Changes to Renewable Fuel Standard Program,) (challenging RFS point of obligation) (Roland Dubois)

03/20 EPA's Brief

State of Texas, et al. v. EPA, No. 16-60670 (5th Cir.) (petition for review of EPA's final action titled "Approval and Promulgation of Air Quality Implementation Plans, Texas, Interstate Transport of Air Pollution for the 2008 Ozone National Ambient Air Quality Standards") (extension of deadline anticipated) (Abi Vijayan)

- 03/20 Joint Status Report  
Kaiser Aluminum Corporation v. EPA, No. 15-1423 (DC Cir.) (petition for review of EPA's "National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production,") (Emily Seidman)
- 03/20 Joint Status Report Due  
American Chemistry Council v. EPA, No. 15-1146 (D.C. Cir.) (Petition for review of EPA's final rule entitled "National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations") (Emily Seidman)
- 03/21 Status Report  
Biogenic CO2 Coalition v. EPA, No. 15-1480 (DC Cir.) (EGU 111(b) BIOMASS LEAD CASE - Petition for review of EPA's final rule entitled "Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units") (Nora Greenglass, Scott Jordan)
- 03/24 Final briefs  
Murray Energy Corp. v. EPA, No. 16-1127 (D.C. Cir.) (petition for review of EPA's final action entitled "Supplemental Finding that it is Appropriate and Necessary to Regulate Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units) (Karen Bianco)
- 03/27 EPA Reply Brief for Motion to Dismiss or Transfer  
Southern Illinois Power Cooperative v. EPA, No. 16-3398 (7th Cir.) (Petition for review of the Air Quality Designations for the 2010 Sulfur Dioxide (SO2) Primary National Ambient Air Quality Standard-Round 2) (Andrea Carrillo)
- 03/27 Status Report  
Chesapeake Bay Foundation, et al. v. EPA, No. 13-1200 (D.C. Cir.) (Petition for review of EPA's final action entitled "Reconsideration of Certain New Source Issues: National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial- Institutional, and Small Industrial-Commercial- - Institutional Steam Generating Units) (Paul Versace)
- 04/03 Status Report  
Valero Energy Corporation v. EPA, No. 16-1055 (DC Cir.) (petition for review of EPA's rule entitled EPA, Regulation of Fuels and Additives: Changes to Renewable Fuel Standard Program,) (challenging RFS point of obligation) (Roland Dubois)
- 04/07 EPA's Consolidated Opposition and Cross-Motion for Summary Judgment  
Community In-Power and Development Association, et al v. EPA, No. 1:16cv1074 (D DC) (failure to issue standards or final residual risk determinations for various major sources of hazardous air pollutants categories. Also for failure to review and revise as necessary emission standards promulgated every 8 years) (Jan Tierney)
- 04/07 Status Report

Sierra Club v. EPA, No. 14-1110 (DC Cir.) (petition for review of EPA's final actions to promulgate an affirmative defense against civil penalties in cases of malfunction in several Federal Register notices - based on after-arising grounds in Natural Resources Defense Council v. EPA, No. 10-1371, which for the first time held that Respondents lack authority to promulgate an affirmative defense against civil penalties. (Sheila Igoe)

04/10 Status Report

Luminant Generation Co. LLC et al. v. EPA, No. 16-9508 (10th Cir.) (Petition for review of EPA's final action titled "Approval and Promulgation of Implementation Plans; Texas and Oklahoma; Regional Haze State Implementation Plans; Interstate Visibility Transport State Implementation Plan to Address Pollution Affecting Visibility and Regional Haze; Federal Implementation Plan for Regional Haze; Final Rule) (Matthew Marks)

04/12 Status Report

Sierra Club v. EPA, No. 1:16-cv-01895 (D. D.C.) (failure to perform a nondiscretionary duty to grant or deny petition seeking an objection to Proposed Title V Permit for the operation of PacifiCorp's Hunter Power Plant located in Castle Dale, Utah) (John Krallman)

04/17 Status Report

National Parks Conservation Association, et al. v. EPA, No. 12-4316 (2nd Cir.) (Petition for review of EPA's final action titled, "Approval and Promulgation of Air Quality Implementation Plans, State of New York, Regional Haze State Implementation Plan and Federal Implementation Plan,") (Matthew Marks)

04/17 Oral Argument

State of North Dakota v. EPA, No. 15-1381 (DC Cir.) (EGU GHG 111(b) CHALLENGE - LEAD CASE - Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units.") (Scott Jordan)

04/18 Answer Due

Sierra Club v. EPA, No. 1:16-cv-01895 (D. D.C.) (failure to perform a nondiscretionary duty to grant or deny petition seeking an objection to Proposed Title V Permit for the operation of PacifiCorp's Hunter Power Plant located in Castle Dale, Utah) (John Krallman)

04/19 Oral Argument

Murray Energy Corporation v. EPA, No. 15-1385 9 (DC Cir.) (Petition for review of EPA's final action titled "National Ambient Air Quality Standards for Ozone") (Melina Williams, Steven Silverman)

04/19 Joint Status Report Due



American Chemistry Council v. EPA, No. 15-1146 (D.C. Cir.) (Petition for review of EPA's final rule entitled "National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations") (Emily Seidman)

04/24 Status Report

Gas Processors Association v. EPA, No. 15-1473 (DC Cir.) (petition for review of EPA's final action entitled "Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems,") (Andrea Carrillo)

04/24 Status Report

Monroe v. EPA, No. 14-1014 (DC Cir.), consolidated with 16-1032 (petition for review of EPA's rule entitled EPA, Regulation of Fuels and Additives: Changes to Renewable Fuel Standard Program) (challenging RFS point of obligation) (Roland Dubois)

04/26 Status Report

Sierra Club v. EPA, No. 1:10-CV-01541-CKK (D. D.C.) (Failure to promulgate a good neighbor FIP for Texas) (Abi Vijayan, Stephanie Hogan)

05/03 EPA Response Brief

State of Arkansas v. EPA, No. 16-4270 (8<sup>th</sup> Cir.) (challenge to Arkansas regional haze FIP) (Lea Anderson)

05/08 Oral Argument

Walter Coke, et al v. EPA, Case No. 15-1166 (D.C. Cir.) (challenge to SSM SIP Call) (Geoffrey Wilcox)

05/15 EPA Reply Brief for Motion to Dismiss or Transfer

Southern Illinois Power Cooperative v. EPA, No. 16-3398 (7<sup>th</sup> Cir.) (Petition for review of the Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard-Round 2) (Andrea Carrillo)

05/17 Status Report

National Alliance of Forest Owners v. EPA, No. 15-1478 (DC Cir.) (CPP BIOMASS LEAD CASE - Petition for review of EPA's final rule titled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units.") (Nora Greenglass, Scott Jordan)

05/17 Status Report Due

American Petroleum Institute v. EPA, No. 07-1022 (D.C. Cir.) (SITE REMEDIATION MACT - challenge to final rule entitled "National Emissions Standards for Hazardous Air Pollutants: Site Remediation) (Scott Jordan)

05/19 EPA's Reply in Support of Cross-Motion

Community In-Power and Development Association, et al v. EPA, No. 1:16cv1074 (D DC) (failure to issue standards or final residual risk determinations for various major

sources of hazardous air pollutants categories. Also for failure to review and revise as necessary emission standards promulgated every 8 years) (Jan Tierney)

- 05/19 Joint Status Report Due  
Kaiser Aluminum Corporation v. EPA, No. 15-1423 (DC Cir.) (petition for review of EPA's "National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production") (Emily Seidman)
- 05/19 Joint Status Report Due  
American Chemistry Council v. EPA, No. 15-1146 (D.C. Cir.) (Petition for review of EPA's final rule entitled "National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations") (Emily Seidman)
- 05/30 EPA Brief  
National Environmental Development Association's Clean Air Project v. EPA, No. 16-1344 (D.C. Cir.) (petition for review of the Regional Consistency Regs) (Karen Bianco)

### **UPCOMING COURT-ORDERED AND RELATED DEADLINES**

**2017**

- 03/13 Comprehensive Description of Compliance Plan  
Murray Energy Corp. v. McCarthy, No. 5:14cv39 (N.D. W. Va.) (Section 321(a) litigation) (Matthew Marks)
- 03/15 Take final action approving SIP submission or issuing FIP for the Mendocino Air District's PSD-related obligations under 110(a)(2)(C), (D)(i)(II) (prong 3 only), (J) Sierra Club v. EPA, No. 3:15cv4328 (N.D. CA) (Zach Pilchen)
- 03/15 Take final action approving SIP submission or issuing FIP for the Northern Sonoma Air District's PSD-related obligations under 110(a)(2)(C), (D)(i)(II) (prong 3 only), (J) Sierra Club v. EPA, No. 3:15cv4328 (N.D. CA) (Zach Pilchen)
- 05/01 Take action on San Francisco Bay Area SIP regarding NSR Permits  
Center For Biological Diversity, et al. v. EPA, No. 4:15cv4663 (ND CA) (for failure to take final action and failure to make findings of failure to submit for 2006 PM2.5 NAAQS nonattainment areas state implementation plans) (Geoffrey Wilcox, Paul Versace)

### **CASES and MAJOR MOTIONS AWAITING DECISION**

- State of Wyoming v. EPA, et al., No. 14-9512 (10<sup>th</sup> Cir.) (petition for review of EPA's approval of Wind River Tribes' (Northern Arapaho and Eastern Shoshone) application for treatment as a state (TAS) status for various non-regulatory programs) (argued November 17, 2015) (Rick Vetter and Tod Siegal [CICLO])
- Physicians for Social Responsibility -Los Angeles v. EPA, No. 14-73362 (9th Cir.) (petition for review of EPA's final rule entitled "Approval and Promulgation of Implementation Plans; California; South Coast 1-Hour and 8-Hour Ozone;" at 79 Fed. Reg. 52; 526 (September 3, 2014)) (argued May 11, 2016) (Jan Tierney)

- Nucor Steel-Arkansas, et al. v. EPA, No. 14-CV-0199 (D. D.C.) (deadline suit for EPA to grant or deny Nucor petition for objection to Title V Operating Permit issued to Big River Steel) (hearing held on EPA Motion to Dismiss on May 17, 2016) (Mark Kataoka)
- State of Arizona v. EPA, No. 14-73368 (9th Cir.) (petition for review of EPA's final action entitled "Promulgation of Air Quality Implementation Plans, Arizona, Regional Haze and Interstate Visibility Transport Federal Implementation Plan." at 79 Fed. Reg. 52,420 (Sept. 3, 2014)) (Lea Anderson, Matthew Marks) (argued June 21, 2016)
- State of West Virginia, et al. v. EPA, No. 15-1363 (D.C. Cir.) CPP CHALLENGE - LEAD CASE - Petition for review of EPA's final rule titled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units." at 80 Fed. Reg. 64,662 (October 23, 2015) (Scott Jordan) (argued September 27, 2016)
- The Hopi Tribe v. EPA, No. 14-73055 (9th Cir.) and Yazzie v. EPA, No. 14-73100 (9th Cir.) (Regional Haze FIP for Navajo Generating Station establishing alternative to BART for NOx) (Lea Anderson) (argued November 18, 2016)
- California Communities Against Toxics, et al. v. EPA, No. 1:15-cv-00512 (D. DC) (deadline suit filed by multiple environmental advocacy groups challenging our failure to meet statutory deadlines for reviewing and, if appropriate, revising air toxics standards for 21 categories of major stationary sources of air toxics) (Jan Tierney) (argued January 6, 2017)
- Sierra Club v. McCarthy, No. 1:16-cv-02238 (D.D.C) (deadline suit to compel EPA to grant or deny petitions for objection to Proposed Title V Permits for a pair of power plants in North Carolina) (Amy Branning) (EPA's reply in support of cross summary judgment motion filed on January 24, 2017)

## **ARLO Deadline Calendar for the Week of January 16, 2017**

### **NEW CASES, NOTICES OF CITIZEN SUIT, and PETITIONS NEW CASES**

#### **NEW CASES**

- Natural Resources Defense Council v. EPA, No. 16-1425 (DC Cir.) (2012 new source performance standards)
- Robinson v. EPA, No. 3:17cv4 (ND WV) (preliminary injunction to stop the implementation of the VW-EPA Agreement)

#### **NOTICES OF CITIZEN SUIT**

- NOI dated December 29, 2016 filed on behalf of Bill Green for failure to respond to petition requesting that the Administrator object to the Title V operating permit for the U.S. Department of Energy Hanford Site (Michael Lee)

#### **PETITIONS**

#### **NEW DECISIONS and SETTLEMENTS**

### **UPCOMING LITIGATION and COURT-ORDERED AND RELATED DEADLINES**

#### **A. UPCOMING LITIGATION DEADLINES**

**2017**

- 01//17 Answer due  
Sierra Club v. McCarthy, No. 1:16-cv-02238 (D.D.C) (failure to perform a nondiscretionary duty to grant or deny petitions seeking an objection to Proposed Title V Permits for the operation of a pair of power plants in North Carolina) (Amy Branning)
- 01/18 Answer Due  
Center for Biological Diversity et al. v. McCarthy, No. 4:16-cv-0542 (N.D. CA)  
(deadline suit related to various PM2.5 SIPs and iSIPs) (Jonathan Skinner-Thompson)
- 01/19 Answer Due  
Environmental Integrity Project et al. v. EPA, No. 1:16-cv-02203 (D.D.C.) (unreasonable delay suit challenging EPA's failure to respond to request to list ammonia as a criteria pollutant) (Lea Anderson)
- 01/19 EPA Brief  
Sierra Club, et al. v. EPA, No. 15-1487 (DC Cir.) (BRICK MACT RULE CHALLENGE - Petition for review of EPA Final Rule entitled "NESHAP for Brick and Structural Clay Products Manufacturing; and NESHAP for Clay Ceramics Manufacturing" (80 FR 65470 (Oct. 26, 2015)) (Scott Jordan)

- 01/19 EPA Brief  
Murray Energy v. EPA, No. 16-1127 (DC Cir.) (petition for review of EPA's final action entitled "Supplemental Finding that it is Appropriate and Necessary to Regulate Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units" at 81 Fed. Reg. 24,420 (April 25, 2016)) (Karen Bianco)
- 01/19 EPA Brief  
ARIPPA v. EPA, No. 15-1180 (DC Cir.) (petition for review of EPA's final action entitled "Reconsideration on the Mercury and Air Toxics Standards (MATS) and the Utility New Source Performance Standards; Final Action", denying petitions for reconsideration of MATS. 80 FR 24218 (April 30, 2015)) (Paul Versace)
- 01/19 Motion to Transfer or Dismiss  
Cedar Falls Utilities v. EPA, No. 16-4504 (8th Cir.) (Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS" (81 FR 74504; Oct. 26, 2016) (main litigation pending in DC Circuit) (Stephanie Hogan, Dan Schramm)
- 01/24 EPA's reply to plaintiff's opposition to cross-motion for summary judgment  
Sierra Club v. McCarthy, No. 1:16-cv-02238 (D.D.C) (failure to perform a nondiscretionary duty to grant or deny petitions seeking an objection to Proposed Title V Permits for the operation of a pair of power plants in North Carolina) (Amy Branning)
- 02/10 Oral argument  
Sierra Club v. EPA, No. 15-1246 (DC Cir.) (petition for review of EPA's final rule determining that EPA completed its standard setting obligation under section 112(c)(6)). (Amy Branning)
- 02/10 EPA Brief and Appendix for Motion to Dismiss or Transfer  
Southern Illinois Power Cooperative v. EPA, No. 16-3398 (7th Cir) (Petition for review of the Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard-Round 2 at 81 Fed. Reg. 45039 (July 12, 2016)) (Andrea Carrillo)
- 02/13 EPA's Opening Brief  
Murray Energy Corp. v. EPA, No. 16-2432 (4th Cir.) (appeal of adverse decision in Section 321(a) litigation) (Matthew Marks)
- 02/14 Oral argument  
Wild Equity Institute v. EPA, No. 15-17502 (9th Cir.) (Appeal of District Court Judgment dismissing case alleging EPA failure to reinitiate ESA consultation on construction of Gateway Generating Station) (Julie Walters)
- 02/14 Oral argument  
Wild Equity Institute v. EPA, No. 15-70199 (9th Cir) (petition for review of EPA's final action titled "Petition on Clean Air Act Title V Permit; Gateway Generating Station; Antioch, CA") (Jonathan Skinner-Thompson)

- 02/17 Oral Argument  
Mexichem Fluor, Inc., et al. v. EPA, No. 15-1328 (D.C. Cir.) (challenge to the Section 612 SNAP Status Change Rule which changed the listing of certain high GWP substitutes for ODS from acceptable to unacceptable) (Jan Tierney)
- 02/22 EPA Reply in Support of Motion for Summary Judgment/Cross-Motion for Summary Judgment  
Sierra Club v. EPA, No. 3:15-cv-4328 (N.D. Cal.) (failure to promulgate 2008 ozone transport FIP for Kentucky) (Zach Pilchen, Stephanie Hogan)
- 03/01 Response Brief  
Robert Ukeiley v. EPA, No. 16-9556 (10th Cir.) (Petition for review of final action approving Colorado's PM10 maintenance plan) (Jonathan Skinner-Thompson)
- 03/06 EPA's Brief  
State of Texas, et al. v. EPA, No. 16-60670 (5th Cir.) (petition for review of EPA's final action titled "Approval and Promulgation of Air Quality Implementation Plans; Texas; Interstate Transport of Air Pollution for the 2008 Ozone National Ambient Air Quality Standards" at 81 Fed. Reg. 53,284 (August 12, 2016)) (extension of deadline anticipated) (Abi Vijayan)
- 03/09 Hearing  
Sierra Club v. EPA, No. 3:15-cv-4328 (N.D. Cal.) (failure to promulgate 2008 ozone transport FIP for Kentucky) (Zach Pilchen, Stephanie Hogan)
- 03/16 Oral Argument  
Sierra Club, et al. v. EPA; No. 15-15894 (9th Cir) (states' challenge to Dist. Ct.'s entry of CD compelling SO2 NAAQS designations; on appeal from No. 13-cv-03953-SI (N.D. Cal.)) (Mike Thrift)
- 03/17 EPA's Response Brief  
Cliffs Natural Resources, Inc. v. EPA, No. 16-2643 (8th Cir.) (Petition for review challenging the revised taconite FIP) (Matthew Marks)
- 03/17 EPA's Brief  
ArcelorMittal USA, LLC v. EPA, No. 16-2653 (8th Cir.) (Petition for review of EPA's final action titled "Air Plan Approval, Minnesota and Michigan, Revision to 2013 Taconite Federal Implementation Plan Establishing BART for Taconite Plants," 81 Red. Reg. 21,672 (Apr. 12, 2016)) (Matthew Marks)
- 03/17 EPA's Brief  
United States Steel Corporation v. EPA, No. 16-2668 (8th Cir.) (Petition for review of EPA's final action titled "Air Plan Approval, Minnesota and Michigan, Revision to 2013 Taconite Federal Implementation Plan Establishing BART for Taconite Plants," 81 Red. Reg. 21,672 (Apr. 12, 2016)) (Matthew Marks)
- 03/27 EPA Reply Brief for Motion to Dismiss or Transfer

Southern Illinois Power Cooperative v. EPA, No. 16-3398 (7th Cir.) (Petition for review of the Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard-Round 2 at 81 Fed. Reg. 45039 (July 12, 2016)) (Andrea Carrillo)

- 04/07 EPA's Consolidated Opposition and Cross-Motion for Summary Judgment Community In-Power and Development Association, et al v. EPA, No. 1:16cv1074 (D DC) (failure to issue standards or final residual risk determinations for various major sources of hazardous air pollutants categories. Also for failure to review and revise as necessary emission standards promulgated every 8 years) (Jan Tierney)
- 04/17 Oral Argument  
State of North Dakota v. EPA, No. 15-1381 (DC Cir.) (EGU GHG 111(b) CHALLENGE - LEAD CASE - Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units." At 80 Fed. Reg. 64510 (October 23, 2015)) (Scott Jordan)
- 04/19 Oral Argument  
Murray Energy Corporation v. EPA, No. 15-1385 9 (DC Cir.) (Petition for review of EPA's final action titled "National Ambient Air Quality Standards for Ozone" at 80 Fed. Reg. 65292 (October 26, 2015)) (Melina Williams, Steven Silverman)
- 05/03 EPA Response Brief  
State of Arkansas v. EPA, No. 16-4270 (8<sup>th</sup> Cir.) (challenge to Arkansas regional haze FIP) (Lea Anderson)
- 05/08 Oral Argument  
Walter Coke, et al v. EPA, Case No. 15-1166 (D.C. Cir.) (challenge to SSM SIP Call) (Geoffrey Wilcox)
- 05/19 EPA's Reply in Support of Cross-Motion  
Community In-Power and Development Association, et al v. EPA, No. 1:16cv1074 (D DC) (failure to issue standards or final residual risk determinations for various major sources of hazardous air pollutants categories. Also for failure to review and revise as necessary emission standards promulgated every 8 years) (Jan Tierney)
- 05/30 EPA Brief  
National Environmental Development Association's Clean Air Project v. EPA, No. 16-1344 (D.C. Cir.) (petition for review of the Regional Consistency Regs) (Karen Bianco)

#### **UPCOMING COURT-ORDERED AND RELATED DEADLINES**

**2017**

- 01/17 Take final action on Utah's 2008 ozone iSIP submission elements 110(a)(2)(D)(i)(I) (prong 1)  
Sierra Club v. EPA, No. 4:14-cv-3198 (N.D. Cal.) (Karen Bianco)
- 01/17 Take final action on Wyoming's iSIP submission elements for multiple NAAQS under 110(a)(2)(D)(i)(I) (prongs 1 and 2) and (II) (prong 4)

Sierra Club v. McCarthy, No. 3:15-cv-04328 (N.D. Cal.) (Zach Pilchen)

- 02/13 EPA to sign notice of final action on Nevada's interstate SIP for the 2008 O3 NAAQS  
State of Nevada v. EPA, No. 3:15-cv-00396-HDM-WGC (D. Nev.) (Stephanie Hogan, Zach Pilchen)
- 03/13 Comprehensive Description of Compliance Plan  
Murray Energy Corp. v. McCarthy, No. 5:14cv39 (N.D. W. Va.) (Section 321(a) litigation) (Matthew Marks)
- 03/15 Take final action approving SIP submission or issuing FIP for the Mendocino Air District's PSD-related obligations under 110(a)(2)(C), (D)(i)(II) (prong 3 only), (J)  
Sierra Club v. EPA, No. 3:15cv4328 (N.D. CA) (Zach Pilchen)
- 03/15 Take final action approving SIP submission or issuing FIP for the Northern Sonoma Air District's PSD-related obligations under 110(a)(2)(C), (D)(i)(II) (prong 3 only), (J)  
Sierra Club v. EPA, No. 3:15cv4328 (N.D. CA) (Zach Pilchen)
- 05/01 Take action on San Francisco Bay Area SIP regarding NSR Permits  
Center For Biological Diversity, et al. v. EPA, No. 4:15cv4663 (ND CA) (for failure to take final action and failure to make findings of failure to submit for 2006 PM2.5 NAAQS nonattainment areas state implementation plans) (Geoffrey Wilcox, Paul Versace)

#### **CASES and MAJOR MOTIONS AWAITING DECISION**

- State of Wyoming v. EPA, et al., No. 14-9512 (10<sup>th</sup> Cir.) (petition for review of EPA's approval of Wind River Tribes' (Northern Arapaho and Eastern Shoshone) application for treatment as a state (TAS) status for various non-regulatory programs) (argued November 17, 2015) (Rick Vetter and Tod Siegal [CICLO])
- Physicians for Social Responsibility -Los Angeles v. EPA, No. 14-73362 (9th Cir.) (petition for review of EPA's final rule entitled "Approval and Promulgation of Implementation Plans; California; South Coast 1-Hour and 8-Hour Ozone;" at 79 Fed. Reg. 52, 526 (September 3, 2014)) (argued May 11, 2016) (Jan Tierney)
- Nucor Steel-Arkansas, et al. v. EPA, No. 14-CV-0199 (D. D.C.) (deadline suit for EPA to grant or deny Nucor petition for objection to Title V Operating Permit issued to Big River Steel) (hearing held on EPA Motion to Dismiss on May 17, 2016) (Mark Kataoka)
- State of Arizona v. EPA, No. 14-73368 (9th Cir.) (petition for review of EPA's final action entitled "Promulgation of Air Quality Implementation Plans, Arizona, Regional Haze and Interstate Visibility Transport Federal Implementation Plan." at 79 Fed. Reg. 52,420 (Sept. 3, 2014)) (Lea Anderson, Matthew Marks) (argued June 21, 2016)
- State of West Virginia, et al. v. EPA, No. 15-1363 (D.C. Cir.) CPP CHALLENGE - LEAD CASE - Petition for review of EPA's final rule titled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units." at 80 Fed. Reg. 64,662 (October 23, 2015) (Scott Jordan) (argued September 27, 2016)



- The Hopi Tribe v. EPA, No. 14-73055 (9th Cir.) and Yazzie v. EPA, No. 14-73100 (9th Cir.) (Regional Haze FIP for Navajo Generating Station establishing alternative to BART for NOx) (Lea Anderson) (argued November 18, 2016)
- California Communities Against Toxics, et al. v. EPA, No. 1:15-cv-00512 (D. DC) (regarding overdue health risk and technology review (RTR) rules for 21 source categories) (Jan Tierney) (argued January, 2017)

## ARLO Deadline Calendar for the Week of January 9, 2017

### **NEW CASES, NOTICES OF CITIZEN SUIT, and PETITIONS NEW CASES**

#### **NEW CASES**

#### **NOTICES OF CITIZEN SUIT**

#### **PETITIONS**

- Petitions for reconsideration of EPA's final action entitled "Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS," at 80 Fed. Reg. 75706 at 81 Fed. Reg. 74504 (October 26, 2016):
  - Grand River Dam Authority and Oklahoma Department of Environmental Quality (Dec. 22, 2016)
  - Oklahoma Generation, LLC (Dec. 22, 2016)
  - Oklahoma Gas & Electric (Dec. 23, 2016)
  - Prairie State Generating Company (Dec. 23, 2016)
  - UARG (Dec. 27, 2016) -Western Farmers Electric Cooperative (Dec. 22, 2016)
  - White Stallion Energy (Dec. 23, 2016)

#### **NEW DECISIONS and SETTLEMENTS**

- Judgment entering voluntary dismissal in Sierra Club v. EPA, No. 16-60755 (5th Cir.) (petition for review of EPA action approving Texas's infrastructure SIP for the 2008 ozone and 2010 NO2 NAAQS, 81 Fed. Reg. 62,375 (Sept. 9, 2016)) (Zach Pilchen)

### **UPCOMING LITIGATION and COURT-ORDERED AND RELATED DEADLINES**

#### **A. UPCOMING LITIGATION DEADLINES**

2017

- 01/09 Response Brief Due  
Sierra Club v. McCarthy, No. 1:16-cv-02238 (D.D.C) (failure to perform a nondiscretionary duty to grant or deny petitions seeking an objection to Proposed Title V Permits for the operation of a pair of power plants in North Carolina) (Amy Branning)
- 01/13 Answer due  
Kelsey Cascadia Rose Juliana et al v. United States, No. 6:15-cv-01517-TC (D. Ore.) (Alleging multi-agency constitutional and public trust violations arising from actions and inactions on climate change) (Zach Pilchen)
- 01/13 EPA's response to Petitioners' cross-motion to expand stay to include BART  
State of Texas, et al. v. EPA, No. 16-60118 (5th Cir.) (Petition for review of EPA's final action titled "Approval and Promulgation of Implementation Plans, Texas and Oklahoma, Regional Haze State Implementation Plans, Interstate Visibility Transport State

Implementation Plan to Address Pollution Affecting Visibility and Regional Haze, Federal Implementation Plan for Regional Haze, Final Rule,” 81 Fed. Reg. 296 (Jan. 5, 2016)) (Lea Anderson, Matthew Marks)

- 01/18 Answer Due  
Center for Biological Diversity et al. v. McCarthy, No. 4:16-cv-0542 (N.D. CA)  
(deadline suit related to various PM2.5 SIPs and iSIPs) (Jonathan Skinner-Thompson)
- 01/19 Answer Due  
Environmental Integrity Project et al. v. EPA, No. 1:16-cv-02203 (D.D.C.) (unreasonable delay suit challenging EPA’s failure to respond to request to list ammonia as a criteria pollutant) (Lea Anderson)
- 01/19 EPA Brief  
Sierra Club, et al. v. EPA, No. 15-1487 (DC Cir.) (BRICK MACT RULE CHALLENGE - Petition for review of EPA Final Rule entitled "NESHAP for Brick and Structural Clay Products Manufacturing; and NESHAP for Clay Ceramics Manufacturing" (80 FR 65470 (Oct. 26, 2015)) (Scott Jordan)
- 01/19 EPA Brief  
Murray Energy v. EPA, No. 16-1127 (DC Cir.) (petition for review of EPA’s final action entitled "Supplemental Finding that it is Appropriate and Necessary to Regulate Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units" at 81 Fed. Reg. 24,420 (April 25, 2016)) (Karen Bianco)
- 01/19 EPA Brief  
ARIPPA v. EPA, No. 15-1180 (DC Cir.) (petition for review of EPA’s final action entitled "Reconsideration on the Mercury and Air Toxics Standards (MATS) and the Utility New Source Performance Standards; Final Action", denying petitions for reconsideration of MATS. 80 FR 24218 (April 30, 2015)) (Paul Versace)
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which changed the listing of certain high GWP substitutes for ODS from acceptable to unacceptable) (Jan Tierney)

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Sierra Club v. EPA, No. 3:15-cv-4328 (N.D. Cal.) (failure to promulgate 2008 ozone transport FIP for Kentucky) (Zach Pilchen, Stephanie Hogan)
- 03/01 Response Brief  
Robert Ukeiley v. EPA, No. 16-9556 (10th Cir.) (Petition for review of final action approving Colorado's PM10 maintenance plan) (Jonathan Skinner-Thompson)
- 03/06 EPA's Brief  
State of Texas, et al. v. EPA, No. 16-60670 (5th Cir.) (petition for review of EPA's final action titled "Approval and Promulgation of Air Quality Implementation Plans; Texas; Interstate Transport of Air Pollution for the 2008 Ozone National Ambient Air Quality Standards" at 81 Fed. Reg. 53,284 (August 12, 2016)) (extension of deadline anticipated) (Abi Vijayan)
- 03/09 Hearing  
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- 03/16 Oral Argument  
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- 03/17 EPA's Response Brief  
Cliffs Natural Resources, Inc. v. EPA, No. 16-2643 (8th Cir.) (Petition for review challenging the revised taconite FIP) (Matthew Marks)
- 03/17 EPA's Brief  
ArcelorMittal USA, LLC v. EPA, No. 16-2653 (8th Cir.) (Petition for review of EPA's final action titled "Air Plan Approval, Minnesota and Michigan, Revision to 2013 Taconite Federal Implementation Plan Establishing BART for Taconite Plants," 81 Red. Reg. 21,672 (Apr. 12, 2016)) (Matthew Marks)
- 03/17 EPA's Brief  
United States Steel Corporation v. EPA, No. 16-2668 (8th Cir.) (Petition for review of EPA's final action titled "Air Plan Approval, Minnesota and Michigan, Revision to 2013 Taconite Federal Implementation Plan Establishing BART for Taconite Plants," 81 Red. Reg. 21,672 (Apr. 12, 2016)) (Matthew Marks)
- 03/23 EPA Brief (Combined Opposition to Plaintiffs' Motion for Summary Judgment and Cross-Motion for Summary Judgment)  
Center for Biological Diversity v. EPA, No. 3:16cv3796 (ND CA) (deadline suit for

failure to timely review, revise and promulgate the Air Quality Criteria for Sulfur Oxides and the NAAQS for Sulfur Dioxide and Nitrogen Oxides as may be appropriate) (Melina Williams)

- 04/07 EPA's Consolidated Opposition and Cross-Motion for Summary Judgment Community In-Power and Development Association, et al v. EPA, No. 1:16cv1074 (D DC) (failure to issue standards or final residual risk determinations for various major sources of hazardous air pollutants categories. Also for failure to review and revise as necessary emission standards promulgated every 8 years) (Jan Tierney)
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State of North Dakota v. EPA, No. 15-1381 (DC Cir.) (EGU GHG 111(b) CHALLENGE - LEAD CASE - Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units." At 80 Fed. Reg. 64510 (October 23, 2015)) (Scott Jordan)
- 04/19 Oral Argument  
Murray Energy Corporation v. EPA, No. 15-1385 9 (DC Cir.) (Petition for review of EPA's final action titled "National Ambient Air Quality Standards for Ozone" at 80 Fed. Reg. 65292 (October 26,2015)) (Melina Williams, Steven Silverman)
- 04/27 EPA Reply Brief  
Center for Biological Diversity v. EPA, No. 3:16cv3796 (ND CA) (deadline suit for failure to timely review, revise and promulgate the Air Quality Criteria for Sulfur Oxides and the NAAQS for Sulfur Dioxide and Nitrogen Oxides as may be appropriate) (Melina Williams)
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- 05/19 EPA's Reply in Support of Cross-Motion  
Community In-Power and Development Association, et al v. EPA, No. 1:16cv1074 (D DC) (failure to issue standards or final residual risk determinations for various major sources of hazardous air pollutants categories. Also for failure to review and revise as necessary emission standards promulgated every 8 years) (Jan Tierney)
- 05/30 EPA Brief  
National Environmental Development Association's Clean Air Project v. EPA, No. 16-1344 (D.C. Cir.) (petition for review of the Regional Consistency Regs) (Karen Bianco)

## **UPCOMING COURT-ORDERED AND RELATED DEADLINES**

**2017**

- 01/10 Take final action on Alabama's 2008 ozone iSIP submission elements 110(a)(2)(D)(i)(II) (prong 4)  
Sierra Club v. EPA, No. 4:14-cv-3198 (N.D. Cal.) (Karen Bianco)
- 01/17 Take final action on Utah's 2008 ozone iSIP submission elements 110(a)(2)(D)(i)(I) (prong 1)  
Sierra Club v. EPA, No. 4:14-cv-3198 (N.D. Cal.) (Karen Bianco)
- 01/17 Take final action on Wyoming's iSIP submission elements for multiple NAAQS under 110(a)(2)(D)(i)(I) (prongs 1 and 2) and (II) (prong 4)  
Sierra Club v. McCarthy, No. 3:15-cv-04328 (N.D. Cal.) (Zach Pilchen)
- 01/19 Proposed Consent Decree deadline for signing a notice of Finding of Failure to Submit various 2008 ozone attainment and OTR SIPs  
Center for Biological Diversity, et al v. EPA, Nos. 4:16cv4092, 3:16cv04092 (N.D. CA) (Derek Mills, Karen Bianco)
- 02/13 EPA to sign notice of final action on Nevada's interstate SIP for the 2008 O3 NAAQS  
State of Nevada v. EPA, No. 3:15-cv-00396-HDM-WGC (D. Nev.) (Stephanie Hogan, Zach Pilchen)
- 03/15 Take final action approving SIP submission or issuing FIP for the Mendocino Air District's PSD-related obligations under 110(a)(2)(C), (D)(i)(II) (prong 3 only), (J)  
Sierra Club v. EPA, No. 3:15cv4328 (N.D. CA) (Zach Pilchen)
- 03/15 Take final action approving SIP submission or issuing FIP for the Northern Sonoma Air District's PSD-related obligations under 110(a)(2)(C), (D)(i)(II) (prong 3 only), (J)  
Sierra Club v. EPA, No. 3:15cv4328 (N.D. CA) (Zach Pilchen)
- 05/01 Take action on San Francisco Bay Area SIP regarding NSR Permits  
Center For Biological Diversity, et al. v. EPA, No. 4:15cv4663 (ND CA) (for failure to take final action and failure to make findings of failure to submit for 2006 PM2.5 NAAQS nonattainment areas state implementation plans) (Geoffrey Wilcox, Paul Versace)

## **CASES and MAJOR MOTIONS AWAITING DECISION**

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- Physicians for Social Responsibility -Los Angeles v. EPA, No. 14-73362 (9th Cir.) (petition for review of EPA's final rule entitled "Approval and Promulgation of Implementation Plans; California; South Coast 1-Hour and 8-Hour Ozone;" at 79 Fed. Reg. 52; 526 (September 3, 2014)) (argued May 11, 2016) (Jan Tierney)

- Nucor Steel-Arkansas, et al. v. EPA, No. 14-CV-0199 (D. D.C.) (deadline suit for EPA to grant or deny Nucor petition for objection to Title V Operating Permit issued to Big River Steel) (hearing held on EPA Motion to Dismiss on May 17, 2016) (Mark Kataoka)
- State of Arizona v. EPA, No. 14-73368 (9th Cir.) (petition for review of EPA's final action entitled "Promulgation of Air Quality Implementation Plans, Arizona, Regional Haze and Interstate Visibility Transport Federal Implementation Plan." at 79 Fed. Reg. 52,420 (Sept. 3, 2014)) (Lea Anderson, Matthew Marks) (argued June 21, 2016)
- State of West Virginia, et al. v. EPA, No. 15-1363 (D.C. Cir.) CPP CHALLENGE - LEAD CASE - Petition for review of EPA's final rule titled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units." at 80 Fed. Reg. 64,662 (October 23, 2015) (Scott Jordan) (argued September 27, 2016)
- The Hopi Tribe v. EPA, No. 14-73055 (9th Cir.) and Yazzie v. EPA, No. 14-73100 (9th Cir.) (Regional Haze FIP for Navajo Generating Station establishing alternative to BART for NOx) (Lea Anderson) (argued November 18, 2016)
- California Communities Against Toxics, et al. v. EPA, No. 1:15-cv-00512 (D. DC) (regarding overdue health risk and technology review (RTR) rules for 21 source categories) (Jan Tierney) (argued January, 2017)

**To:** Cyran, Carissa[Cyran.Carissa@epa.gov]  
**From:** McCabe, Janet  
**Sent:** Sat 12/10/2016 3:38:27 PM  
**Subject:** RE: SIGNED Texas Regional Haze BART FIP proposal

Great, thanks.

**From:** Cyran, Carissa  
**Sent:** Friday, December 09, 2016 5:00 PM  
**To:** McCabe, Janet <McCabe.Janet@epa.gov>  
**Cc:** Lewis, Josh <Lewis.Josh@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>  
**Subject:** SIGNED Texas Regional Haze BART FIP proposal

**From:** Feldman, Michael  
**Sent:** Friday, December 09, 2016 4:45 PM  
**To:** Donaldson, Guy <Donaldson.Guy@epa.gov>; Hansen, Mark <Hansen.Mark@epa.gov>;  
Cyran, Carissa <Cyran.Carissa@epa.gov>  
**Subject:** FW: Prepublication copy of the Texas Regional Haze BART FIP proposal

Carissa – The notice was signed this morning. Please find the prepublication version attached.

**From:** Young, Carl  
**Sent:** Friday, December 09, 2016 2:35 PM  
**To:** Kordzi, Joe <Kordzi.Joe@epa.gov>; Feldman, Michael <Feldman.Michael@epa.gov>;  
Snyder, Erik <snyder.erik@epa.gov>; Donaldson, Guy <Donaldson.Guy@epa.gov>; Hansen,  
Mark <Hansen.Mark@epa.gov>; Thomas, Carrie <Thomas.Carrie@epa.gov>; Tomasovic, Brian  
<Tomasovic.Brian@epa.gov>; Watson, Lucinda <Watson.Lucinda@epa.gov>; Olszewski,  
Joshua <olszewski.joshua@epa.gov>  
**Subject:** Prepublication copy of the Texas Regional Haze BART FIP proposal

The EPA Region 6 Regional Administrator, Ron Curry, signed this proposed rule on December 9, 2016, and EPA is submitting it for publication in the Federal Register. A prepublication copy



is attached.

While we have taken steps to ensure the accuracy of this proposal, it is not the official version for purposes of public comment. Please refer to the official version in a forthcoming Federal Register publication, which will appear on the Government Printing Office's FDsys website (<https://www.gpo.gov/fdsys/search/home.action>), Regulations.gov (<http://www.regulations.gov>), and in the EPA section of the FR website (<https://www.federalregister.gov/agencies/environmental-protection-agency>) in Docket No. EPA-R06-OAR-2016-0611.

Carl Young

EPA Region 6 Air Quality Program

(214) 665-6645

**From:** Donaldson, Guy  
**Location:** R6-ConfRm-CypressTree-06O02@epa.gov  
**Importance:** Normal  
**Subject:** FW: Texas BART  
**Start Date/Time:** Tue 11/8/2016 4:30:00 PM  
**End Date/Time:** Tue 11/8/2016 6:00:00 PM

-----Original Appointment-----

**From:** Donaldson, Guy  
**Sent:** Wednesday, November 02, 2016 12:45 PM  
**To:** Donaldson, Guy; matthew.kuryla@bakerbotts.com; Eckberg, Craig; Tomasovic, Brian; Kordzi, Joe; Feldman, Michael  
**Subject:** Texas BART  
**When:** Tuesday, November 08, 2016 10:30 AM-12:00 PM (UTC-06:00) Central Time (US & Canada).  
**Where:** R6-ConfRm-CypressTree-06O02@epa.gov

Call in number 866-299-3188

**Ex. 6 - Personal Privacy**

**From:** Theresa Pella  
**Importance:** Normal  
**Subject:** hold for CenSARA TWS Committee monthly call and Nov. call summary  
**Start Date/Time:** Tue 12/13/2016 4:00:00 PM  
**End Date/Time:** Tue 12/13/2016 5:00:00 PM  
16 11 15 TWS Comm call summary DRAFT.docx

..  
..  
call in info

1-888-965-8998

Ex. 6 - Personal Privacy

**To:** Snyder, Erik[snyder.erik@epa.gov]  
**From:** Texas Commission on Environmental Quality  
**Sent:** Fri 2/10/2017 6:40:50 PM  
**Subject:** TCEQ Title V Operating Permits: Announcement

You are subscribed to "Title V Operating Permits: Announcements" from the Texas Commission on Environmental Quality. This information has recently been updated, and is now available.

February 10, 2017: Adoption of 30 TAC Chapter 122 rulemaking adds Cross-State Air Pollution Rule (CSAPR) as an applicable requirement.

Effective February 23, 2017, any unit that is subject to CSAPR requirements must be identified in the Title V Permit.

On October 26, 2016, the EPA finalized an update to CSAPR for the 2008 ozone NAAQS by issuing the final CSAPR Update.

On February 1, 2017, the Commission approved the adoption of amended and repealed sections of 30 TAC Chapter 122 and corresponding revisions to the state implementation plan, effective February 23, 2017. This included the addition of CSAPR as an applicable requirement, as well as the removal of outdated provisions relating to the Clean Air Interstate Rule (CAIR).

After February 23, 2017, all SOP applications which include any units that are subject to CSAPR requirements, including revised SOPs in which any revision items are associated with existing units that were subject to CAIR requirements, must include CSAPR requirements in place of CAIR requirements as applicable. Any pending application which includes CAIR applicability, and for which notice has not yet been published by February 23, 2017, must include CSAPR requirements. In order to avoid any potential noncompliance situations, any pending SOP applications which include CAIR applicability, and for which notice has been published prior to February 23, 2017, will require either a separate minor revision application to be submitted before operating a unit that is the affected CSAPR source, or addition of the CSAPR terms and extension of the current public notice comment period.

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This email was sent to [snyder.erik@epa.gov](mailto:snyder.erik@epa.gov) using GovDelivery, on behalf of: Texas Commission on Environmental  
Quality · 12100 Park 35 Circle · Austin TX 78753 · 512-239-1000



**To:** Dianne Anderson[dianne.anderson@tceq.texas.gov]; Daniel Menendez[Daniel.Menendez@tceq.texas.gov]; Daniel.Jamieson@tceq.texas.gov[Daniel.Jamieson@tceq.texas.gov]; Zarena Post[zarena.post@tceq.texas.gov]; Smith, Jim[Smith.Jim@epa.gov]; Doug Boyer[doug.boyer@tceq.texas.gov]; Chris Kite[chris.kite@tceq.texas.gov]; Ron Thomas[Ron.Thomas@tceq.texas.gov]; Jeff Stonesifer[jstonesifer@cabq.gov]; Sufi Mustafa[Sufi.Mustafa@state.nm.us]; Eric Peters[eric.peters@state.nm.us]; Gi-Dong[gi-dong.kim@state.nm.us]; Eric Milligan[Eric.Milligan@deq.ok.gov]; oseph.wills@deq.ok.gov[oseph.wills@deq.ok.gov]; Lee Warden[lee.warden@DEQ.OK.gov]; Leon Ashford[Leon.Ashford@deq.ok.gov]; MAC@adeq.state.ar.us[MAC@adeq.state.ar.us]; Thomas Rheaume[rheaume@adeq.state.ar.us]; Clark, David[CLARKD@adeq.state.ar.us]; vennetta.hayes@la.gov[vennetta.hayes@la.gov]; Yvette Olmos[Yvette.Olmos@LA.GOV]; Tien Nguyen[tien.nguyen@LA.GOV]; john.babin[john.babin@la.gov]  
**Cc:** Donaldson, Guy[Donaldson.Guy@epa.gov]; Snyder, Erik[snyder.erik@epa.gov]; Imhoff, Robert[imhoff.robert@epa.gov]; Mohr, Ashley[Mohr.Ashley@epa.gov]  
**From:** Feldman, Michael  
**Sent:** Tue 12/27/2016 2:22:05 PM  
**Subject:** Final Revision to EPA's Guideline on Air Quality Models  
[Appendix W-Fact Sheet.pdf](#)  
[AppendixW 2016.pdf](#)

On December 20, 2016, the Administrator signed a final rule that revises the Guideline on Air Quality Models. The Guideline provides EPA-recommended models and other techniques, as well as guidance for their use, for predicting ambient concentrations of air pollutants. EPA's finalized changes enhance the formulation and application of the agency's AERMOD dispersion model, prescribe modeling techniques for secondarily formed fine particle and ozone pollution for single sources and makes various editorial improvements.

A Fact Sheet for the final rule and the pre-Federal Register version of the Final Rule are attached to this email for easy reference. Additionally, there is an informational 2016 Appendix W Final Rule webpage available on the EPA's SCRAM website at the following link: [https://www3.epa.gov/ttn/scram/appendix\\_w-2016.htm](https://www3.epa.gov/ttn/scram/appendix_w-2016.htm). This webpage provides access to updated model code, documentation, and technical guidance related to this final action.

The EPA will be scheduling webinars and other outreach to the stakeholder community in January 2017. Information on these webinars and other engagements will be posted to the EPA's SCRAM website once scheduled. In the interim, direct all questions to Mr. George M. Bridgers, email: [Bridgers.George@epa.gov](mailto:Bridgers.George@epa.gov).

Please share this announcement and information with your respective colleagues and interested parties as soon as possible.



**To:** Ron Thomas[Ron.Thomas@tceq.texas.gov]  
**From:** Snyder, Erik  
**Sent:** Tue 12/6/2016 2:14:04 AM  
**Subject:** RE: MERPs Draft Guidance Release for Review and Comment

Ron,

Kirk and others did the heavy lifting, but with my background I was involved throughout the development off and on. Good to get it out for input.

Work is busy with the SO2 designations and monitor/modeling issues and TX BART and Louisiana RH, but will slow down some once we get to next week. Plan to take a couple of weeks off for holidays for family time. Plan to stay in town other than may go to Sugar Bowl. Hard to pass up a trip to NO.

How about you? Hope things are going well and you get to take some time off with family and kids. They never stop being kids although it is a different feeling when they go off to college. Any trips planned?

-Erik

Erik Snyder

Lead Regional Air Quality Modeler  
EPA Region 6  
Phone: 214-665-7305  
Fax: 214-665-7263  
email: [snyder.erik@epa.gov](mailto:snyder.erik@epa.gov)

**From:** Ron Thomas [mailto:Ron.Thomas@tceq.texas.gov]  
**Sent:** Monday, December 05, 2016 4:10 PM  
**To:** Snyder, Erik <snyder.erik@epa.gov>  
**Subject:** RE: MERPs Draft Guidance Release for Review and Comment



Erik,

Thanks. I did receive it via others, but I'm thankful for your forward.

Did you have direct input to this guidance?

I hope this is not too stressful of a season for you, such that you can enjoy it with the kids.

-Ron

**From:** Snyder, Erik [<mailto:snyder.erik@epa.gov>]

**Sent:** Monday, December 05, 2016 8:30 AM

**To:** Stephen Davis <[stephen.davis@tceq.texas.gov](mailto:stephen.davis@tceq.texas.gov)>; Zarena Post <[zarena.post@tceq.texas.gov](mailto:zarena.post@tceq.texas.gov)>; Jim Smith <[jim.smith@tceq.texas.gov](mailto:jim.smith@tceq.texas.gov)>; Ron Thomas <[Ron.Thomas@tceq.texas.gov](mailto:Ron.Thomas@tceq.texas.gov)>; Jeff Stonesifer <[jstonesifer@cabq.gov](mailto:jstonesifer@cabq.gov)>; Sufi Mustafa <[Sufi.Mustafa@state.nm.us](mailto:Sufi.Mustafa@state.nm.us)>; Lee Warden <[lee.warden@DEQ.OK.gov](mailto:lee.warden@DEQ.OK.gov)>; Leon Ashford <[Leon.Ashford@deq.ok.gov](mailto:Leon.Ashford@deq.ok.gov)>; Mark McCorkle (MAC@adeq.state.ar.us) <[MAC@adeq.state.ar.us](mailto:MAC@adeq.state.ar.us)>; vennetta.hayes@la.gov

**Subject:** FW: MERPs Draft Guidance Release for Review and Comment

Hi,

OAQPS posted the DRAFT MERP guidance for Review and comment. I think Ashley sent this to the permit folks but through you may be interested in this as well. Public comments accepted through Feb. 3. Let me know if you have any questions.

-Erik

Erik Snyder

Lead Regional Air Quality Modeler  
EPA Region 6

Phone: 214-665-7305  
Fax: 214-665-7263  
email: [snyder.erik@epa.gov](mailto:snyder.erik@epa.gov)

**From:** Bridgers, George

**Sent:** Friday, December 02, 2016 2:07 PM

**Subject:** MERPs Draft Guidance Release for Review and Comment

Regional Office Modeling Contacts and Federal Partner Agencies,

The Environmental Protection Agency (EPA) is providing the attached *Guidance on the Development of Modeled Emission Rates for Precursors (MERPs) as a Tier 1 Demonstration Tool for Ozone and PM<sub>2.5</sub> under the PSD Permitting Program* to the state and local air agencies, as well as the public, for consideration, review and comment. The MERP reflects an emission rate of a precursor pollutant that would result in a specific change in ozone or fine particle pollution levels and may be used by permit authorities in determining if a new or modifying source will cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS) for ozone or fine particles. This draft guidance document reflects the EPA's recommendations for how air agencies may develop and use MERPs as a Tier 1 demonstration tool to satisfy compliance demonstration requirements for ozone and fine particle pollution for permit-related assessments under the Prevention of Significant Deterioration (PSD) program.

The EPA will accept comment on the draft guidance document through **Friday, February 3, 2017**. Information on how to submit comments as well as the point of contact for questions is included in the Transmittal Memorandum, which is included with the attachment. For convenience and future reference, the draft guidance document is also available through the EPA's SCRAM website at:

[https://www3.epa.gov/ttn/scram/guidance/guide/EPA454\\_R\\_16\\_006.pdf](https://www3.epa.gov/ttn/scram/guidance/guide/EPA454_R_16_006.pdf).

The EPA will also be scheduling a webinar to step through the draft guidance document and answer clarifying questions. Once scheduled, a webinar announcement will be shared in advance via the same communication pathways as this correspondence and will also be posted under the Announcement section of the EPA's SCRAM website at: <https://www.epa.gov/scram>.

Please share this announcement information with your respective state, local, and tribal agencies and with any interested colleagues in a timely manner. Do not hesitate to contact me if there are any questions or needed clarification with respect to the draft guidance document or associated comment period.

My regards,

George

---

George M. Bridgers, CPM, Environmental Scientist  
U.S. Environmental Protection Agency  
Office of Air Quality Planning and Standards  
AQAD - Air Quality Modeling Group  
109 TW Alexander Drive  
Room C431B - Mail Drop C439-01  
Research Triangle Park, NC 27711  
Phone: 919-541-5563  
Fax: 919-541-0044

**To:** Thomas, Carrie[Thomas.Carrie@epa.gov]; Schoellkopf, Lynde[Schoellkopf.Lynde@epa.gov]; Wiley, Adina[Wiley.Adina@epa.gov]; Young, Carl[young.carl@epa.gov]  
**From:** Olszewski, Joshua  
**Sent:** Fri 2/10/2017 7:36:24 PM  
**Subject:** FW: TCEQ Title V Operating Permits: Announcement

FYI

**From:** Texas Commission on Environmental Quality [mailto:tceq@service.govdelivery.com]  
**Sent:** Friday, February 10, 2017 12:41 PM  
**To:** Olszewski, Joshua <olszewski.joshua@epa.gov>  
**Subject:** TCEQ Title V Operating Permits: Announcement

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February 10, 2017: [Adoption of 30 TAC Chapter 122 rulemaking adds Cross-State Air Pollution Rule \(CSAPR\) as an applicable requirement](#).

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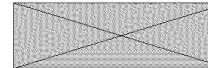


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This email was sent to [olszewski.joshua@epa.gov](mailto:olszewski.joshua@epa.gov) using GovDelivery, on behalf of: Texas Commission on Environmental Quality · 12100 Park 35 Circle · Austin TX 78753 · 512-239-1000



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2016-0611; FRL-9955-77- Region 6]

Promulgation of Air Quality Implementation Plans; State of Texas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule; extension of comment period.

Summary: In the January 4, 2017 Federal Register, the Environmental Protection Agency (EPA) requested comments by March 6, 2017 on a proposed action to promulgate a Federal Implementation Plan (FIP) to address the Clean Air Act requirement for electric generating units (EGUs) in Texas to install and operate the Best Available Retrofit Technology. The proposed action would also disapprove a portion of the Texas State Implementation Plan (SIP) that evaluated BART for particulate matter (PM) at EGUs. The proposal also reconsiders earlier disapprovals of portions of several SIP revisions submitted to satisfy the requirement to address interstate visibility transport for six National Ambient Air Quality Standards, newly proposing that they be disapproved and that the proposed EGU BART FIP would satisfy any FIP obligation for interstate visibility transport that would follow from those disapprovals. EPA is extending the public comment period for this proposal until April 5, 2017[30 days]...April 20, 2017 [45 days].

Dates

Written comments must be received on or before April 5/20, 2017.

ADDRESSES:

Submit your comments, identified by Docket No. EPA-R06-OAR-2016-0611, at <http://www.regulations.gov> or via email to [R6\\_TX-BART@epa.gov](mailto:R6_TX-BART@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Joe Kordzi, 214-665-7186, [Kordzi.joe@epa.gov](mailto:Kordzi.joe@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g.,

CBI).

The Texas regional haze SIP is available online at: [https://www.tceq.texas.gov/airquality/sip/bart/haze\\_sip.html](https://www.tceq.texas.gov/airquality/sip/bart/haze_sip.html). It is also available for public inspection during official business hours, by appointment, at the Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT:

Joe Kordzi, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-7186; fax number 214-665-7263; email address [Kordzi.joe@epa.gov](mailto:Kordzi.joe@epa.gov).

SUPPLEMENTARY INFORMATION:

Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

On January 4, 2017, we published in the Federal Register a proposed rule pertaining to regional haze and interstate transport of pollution affecting visibility (82 FR 912). Specifically, we proposed to (1) partially disapprove a portion of the Texas SIP pertaining to the particulate matter (PM) BART requirement for EGUs, (2) address by FIP authority the BART requirement for Texas EGUs, including proposed source-specific BART limits on 29 EGUs for PM and sulfur dioxide (SO<sub>2</sub>), and (3) sulfur dioxide SO<sub>2</sub> and oxides of nitrogen NO<sub>x</sub> partially approve and partially disapprove revisions to the Texas SIP pertaining to regional haze and disapprove revisions regarding visibility protection, (2) disapprove a revision to the Oklahoma SIP pertaining to regional haze, (3) reconsider and re-propose disapproval of portions of several SIP revisions submitted to satisfy the requirement to address interstate visibility transport for six NAAQS, and (4) determine that the proposed BART FIP emission limits would meet the interstate visibility transport requirements for these NAAQS, satisfying any FIP obligations that would follow from disapprovals of the SIP revisions on requirements to address interstate visibility transport.

We received several requests for an extension of the comment period and, in response, have decided to allow an additional 30/45 days. We are extending the comment period to April 5/20, 2017.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Interstate transport of pollution, Regional haze, Best available control technology.

Authority

42 U.S.C. 7401 et seq.

Dated: February XX, 2017.

Wren Stenger,

Multimedia Division Director, Region 6.

**To:** Schoellkopf, Lynde[Schoellkopf.Lynde@epa.gov]; Thomas, Carrie[Thomas.Carrie@epa.gov]  
**From:** Young, Carl  
**Sent:** Thur 12/15/2016 2:56:33 PM  
**Subject:** FW: Materials for the December 15 TCEQ/EPA SIP monthly call (2:00 to 3:00; 866-299-3188, access code Ex. 6 - Personal Privacy)  
[Agenda for 12-15-2016 call.docx](#)  
[Action Items from 11-17-2016.docx](#)  
[R6 Active TX SIPs with colors 12-14-2016.xlsx](#)

**From:** Young, Carl

**Sent:** Wednesday, December 14, 2016 5:08 PM

**To:** 'Walker Williamson' <walker.williamson@tceq.texas.gov>; 'Kristin Patton' <Kristin.Patton@tceq.texas.gov>; 'donna.huff@tceq.texas.gov' <donna.huff@tceq.texas.gov>; 'Vincent Meiller' <vincent.meiller@tceq.texas.gov>

**Cc:** John Walser <Walser.John@epa.gov>; Stanton, Marya <Stanton.Marya@epa.gov>; Fuerst, Sherry <fuerst.sherry@epa.gov>; Salem, Nevine <Salem.Nevine@epa.gov>; Guy Donaldson <Donaldson.Guy@epa.gov>; Adina Wiley <wiley.adina@epa.gov>; Carrie Paige <paige.carrie@epa.gov>; Dayana Medina <Medina.Dayana@epa.gov>; Jeffrey Riley <Riley.Jeffrey@epa.gov>; Jacques, Wendy <Jacques.Wendy@epa.gov>; Todd, Robert <Todd.Robert@epa.gov>; Donaldson, Tracie <donaldson.tracie@epa.gov>; Pitre, Randy <Pitre.Randy@epa.gov>; Vaughn, Gloria <Vaughn.Gloria@epa.gov>; Ken Boyce <boyce.kenneth@epa.gov>; Imhoff, Robert <imhoff.robert@epa.gov>; Nann, Barbara <nann.barbara@epa.gov>; Smith, Suzanne <Smith.Suzanne@epa.gov>; Watson, Lucinda <watson.lucinda@epa.gov>

**Subject:** Materials for the December 15 TCEQ/EPA SIP monthly call (2:00 to 3:00; 866-299-3188, access code Ex. 6 - Personal Privacy)

Attached please find materials for the December 15 call. These include the:

- Agenda
- Action item tracking table
- Updated list of active Texas SIPs with color codes

Talk with you on Thursday.

Carl



Carl Young

EPA Region 6 Air Quality Program

(214) 665-6645

**To:** Schoellkopf, Lynde[Schoellkopf.Lynde@epa.gov]; Thomas, Carrie[Thomas.Carrie@epa.gov]  
**From:** Watson, Lucinda  
**Sent:** Wed 12/14/2016 11:19:39 PM  
**Subject:** FW: Materials for the December 15 TCEQ/EPA SIP monthly call (2:00 to 3:00; 866-299-3188, access code Ex. 6 - Personal Privacy)  
[Agenda for 12-15-2016 call.docx](#)  
[Action Items from 11-17-2016.docx](#)  
[R6 Active TX SIPs with colors 12-14-2016.xlsx](#)

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**Sent:** Wednesday, December 14, 2016 5:08 PM

**To:** Walker Williamson <walker.williamson@tceq.texas.gov>; 'Kristin Patton' <Kristin.Patton@tceq.texas.gov>; donna.huff@tceq.texas.gov; 'Vincent Meiller' <vincent.meiller@tceq.texas.gov>

**Cc:** Walser, John <Walser.John@epa.gov>; Stanton, Marya <Stanton.Marya@epa.gov>; Fuerst, Sherry <fuerst.sherry@epa.gov>; Salem, Nevine <Salem.Nevine@epa.gov>; Donaldson, Guy <Donaldson.Guy@epa.gov>; Wiley, Adina <Wiley.Adina@epa.gov>; Paige, Carrie <Paige.Carrie@epa.gov>; Medina, Dayana <Medina.Dayana@epa.gov>; Riley, Jeffrey <Riley.Jeffrey@epa.gov>; Jacques, Wendy <Jacques.Wendy@epa.gov>; Todd, Robert <Todd.Robert@epa.gov>; Donaldson, Tracie <donaldson.tracie@epa.gov>; Pitre, Randy <Pitre.Randy@epa.gov>; Vaughn, Gloria <Vaughn.Gloria@epa.gov>; Boyce, Kenneth <boyce.kenneth@epa.gov>; Imhoff, Robert <imhoff.robert@epa.gov>; Nann, Barbara <nann.barbara@epa.gov>; Smith, Suzanne <Smith.Suzanne@epa.gov>; Watson, Lucinda <Watson.Lucinda@epa.gov>

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Carl Young

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2016-0611; FRL-9955-77- Region 6]

Promulgation of Air Quality Implementation Plans; State of Texas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule; extension of comment period.

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SUPPLEMENTARY INFORMATION:

Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

On January 4, 2017, we published in the Federal Register a proposed rule pertaining to regional haze and interstate visibility transport (82 FR 912). Specifically, we proposed to (1) partially disapprove a portion of the Texas SIP pertaining to the particulate matter (PM) BART requirement for EGUs, (2) address by FIP authority the BART requirement for Texas EGUs, including proposed source-specific BART limits on 29 EGUs for PM and sulfur dioxide (SO<sub>2</sub>) and a proposed finding that NO<sub>x</sub> BART for EGUs in Texas is met by participation in the Cross-State Air Pollution Rule (CSAPR), and (3) reconsider and re-propose disapproval of portions of several SIP revisions submitted to satisfy the requirement to address interstate visibility transport for six NAAQS, and (4) determine that the proposed BART FIP emission limits would meet the interstate visibility transport requirements for these NAAQS, satisfying any FIP obligations that would follow from disapprovals of the SIP revisions on requirements to address interstate visibility transport.

We received several requests for an extension of the comment period and, in response, have decided to allow an additional 30/45 days. We are extending the comment period to April 5/20, 2017.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Interstate transport of pollution, Regional haze, Best available control technology.

Authority

42 U.S.C. 7401 et seq.

Dated: February XX, 2017.

Wren Stenger,

Multimedia Division Director, Region 6.

# Comments on EPA's Proposed Implementation Rule for the 2015 Ozone National Ambient Air Quality Standards (NAAQS) (EPA-HQ-OAR-2016-0202)

Prepared by Clean Air Act Advisory Committee Member Andrew Hoekzema  
February 13, 2017

## Introduction

This document serves as formal comments on EPA's proposed implementation rule for the 2015 Ozone National Ambient Air Quality Standards (NAAQS), published in the Federal Register on November 17, 2016 (81 FR 81276, EPA-HQ-OAR-2016-0202). These comments reference, support, and expand upon a letter submitted by the Central Texas Clean Air Coalition (CAC) of the Capital Area Council of Governments (CAPCOG). While this comment letter provides support for the CAC's comment letter, the specific points and analyses contained in this letter are my own, and do not necessarily represent the perspectives of the CAC, CAPCOG's Executive Committee, or their members. I make these comments exclusively in my individual capacity as a member of the U.S. Environmental Protection Agency (EPA) Clean Air Act Advisory Committee (CAAAC).

Topics covered in this comment letter include:

1. EPA's general approach to implementing the 2015 Ozone NAAQS exclusively under Title I, Part D, Subpart 2 of the Clean Air Act, rather than exploring the opportunity to implement the NAAQS under Subpart 1 in many nonattainment areas where the courts have allowed EPA to consider such an option;
2. Subpart 2 requirements for volatile organic compound (VOC) "Reasonably Available Control Technology" (RACT) and "Reasonable Further Progress" (RFP), which can create potentially absurd unintended consequences for some areas;
3. How EPA's proposal to revoke the 2008 Ozone NAAQS under "Option 1" (one year after designations for the 2015 Ozone NAAQS in all areas) rather than "Option 2" could delay ozone reductions that would have otherwise occurred in existing nonattainment areas if the more stringent 2015 Ozone NAAQS had never been promulgated;
4. How EPA's classification approach will likely result in delays in attainment of the 2015 Ozone NAAQS, particularly in areas unlikely to attain the 2015 Ozone NAAQS by 2020 but likely to wind up classified as "Marginal" and nearby metro areas;
5. Section 179B petitions to address the impacts of foreign emissions on nonattainment; and
6. Issues related to the timing of initial area designations and attainment dates.

Each of these issues are examined in detail below. Based on my analysis of the Clean Air Act and relevant court cases, I believe that EPA has the authority under the Clean Air Act to consider a much wider range of options for implementing the 2015 Ozone NAAQS than it has proposed. There are ways that EPA can implement the NAAQS that would achieve clean air quicker, at less expense, and with a more equitable distribution of burdens than the implementation approach EPA has proposed. I believe that EPA should consider alternative approaches in the spirit of Congress's stated goals for the Clean Air Act, "to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this chapter, for pollution prevention."

## 1 Subpart 1 Implementation v. Subpart 2 Implementation

Title I, Part D of the Clean Air Act includes two different subparts that describe SIP requirements for nonattainment areas: "Subpart 1" (sections 171 – 179B of the Clean Air Act and 42 U.S.C. §7501 - §7509a), which was adopted in the 1977 Clean Air Act amendments and describes general requirements for any nonattainment area, and "Subpart 2" (sections 181 – 193 of the Clean Air Act and 42 U.S.C. §7511 – §7515), which describes the 1990 Clean Air Act amendment SIP requirements for 1979 1-Hour Ozone NAAQS nonattainment areas. The 1990 amendments also included subparts that describe specific requirements for areas designated nonattainment carbon monoxide (subpart 3), particulate matter (subpart 4), and sulfur oxides, nitrogen dioxide, or lead (subpart 5). Two of the overarching key legal and policy questions for this rulemaking are: 1) whether EPA has the legal authority to implement the 2015 Ozone NAAQS under "subpart 1" rather than "subpart 2," and 2) if so, which implementation approach would provide better policy outcomes. **Court rulings on this issue provide the EPA with a path to implementing the 2015 Ozone NAAQS under subpart 1 for most areas of the country, and it appears to be preferable from both an air quality and economic perspective to implementing the 2015 Ozone NAAQS exclusively under subpart 2.**

1.1 EPA's Legal Authority to Implement the 2015 Ozone NAAQS Under Subpart 1  
Under 42 U.S.C. §7501, which includes the definitions used for subpart 1 ("Nonattainment Areas in General"), "The term 'nonattainment area' means, for any air pollutant, an area which is designated 'nonattainment' with respect to that pollutant within the meaning of section 7407(d) of this title." The title of subpart 2 is "Additional Provisions for Ozone Nonattainment Areas," and starts with the following text:

*"§7511. Classification and attainment dates*

*(a) Classification and attainment dates for 1989 nonattainment areas*

*(1) Each area designated nonattainment for ozone pursuant to section 7407(d) of this title shall be classified at the time of such designation under table 1, by operation of law, as a Marginal Area, a Moderate Area, a Serious Area, a Severe Area, or an Extreme Area based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the Administrator most recently before November 15, 1990. For each area classified under this subsection, the primary standard attainment date for ozone shall be as practicable but not later than the date provided in table 1.*

TABLE 1

Area Class	Design Value*	Primary Standard Attainment Date**
Marginal	0.121 up to 0.138	3 years after November 15, 1990
Moderate	0.138 up to 0.160	6 years after November 15, 1990
Serious	0.160 up to 0.180	9 years after November 15, 1990
Severe	0.180 up to 0.280	15 years after November 15, 1990
Extreme	0.280 and above	20 years after November 15, 1990

\*The design value is measured in parts per million (ppm)

\*\*The primary attainment date is measured from November 15, 1990"

When the EPA revised the Ozone NAAQS in 1997, it initially sought to implement the new standard exclusively under the more general requirements for nonattainment areas of subpart 1, rather than the more specific requirements of subpart 2. EPA argued at the time that the aforementioned text was referring only to "1989 nonattainment areas," and therefore should not apply to nonattainment areas under a more stringent ozone NAAQS than Congress had in mind when it passed the 1990 Clean Air Act amendments.

#### 1.1.1 2001 Supreme Court Ruling in *Whitman v. ATA*

In 2001, the U.S. Supreme Court weighed in on the EPA's proposed approach to implementing the 1997 Ozone NAAQS in *Whitman v. American Trucking Associations*, with Justice Scalia writing the court's opinion. The court concluded that there was ambiguity in the extent to which Subparts 1 and 2 would apply to revised ozone NAAQS, and stated that it would defer to a reasonable interpretation by EPA of how to resolve the issue. However, they also ruled that the specific interpretation EPA had provided was contrary to EPA's intent that Subpart 2 apply to certain areas with ozone levels above a certain level contemplated by Congress at the time the 1990 Clean Air Act Amendments were adopted. EPA's approach, the court found, was unreasonable in that it rendered Subpart 2 "utterly nugatory" for areas that Congress had clearly intended that Subpart to apply to for some time. Here are some key quotes from the opinion:

*"Subpart 2 is not limited solely to the 1989 nonattainment areas...*

*It may well be, as the EPA argues – and as the concurring opinion below on denial of rehearing pointed out...that some provisions of Subpart 2 are ill fitted to implementation of the revised standard. Using the old 1-hour averages of ozone levels, for example, as Subpart 2 requires...would produce an inexact estimate of the new 8-hour averages. Also, to the extent that the new ozone standard is stricter than the old one...the classification system of Subpart 2 contains a gap, because it fails to classify areas whose ozone levels are greater than the new standard (and thus nonattaining) but less than the approximation of the old standard codified in Table 1. And finally, Subpart 2's method for calculating attainment dates– which is simply to count forward a certain number of years from November 15, 1990 (the date the 1990 CAA Amendments took force), depending on how far out of attainment the area started– seems to make no sense for areas that are first classified under a new standard after November 15, 1990. If, for example, areas were classified in the year 2000, many of the deadlines would already have expired at the time of classification. These gaps in Subpart 2's scheme prevents us from*



*concluding that Congress clearly intended Subpart 2 to be the exclusive, permanent means of enforcing a revised ozone standard in nonattainment areas. **The statute is in our view ambiguous concerning the manner in which Subpart 1 and Subpart 2 interact with regard to revised ozone standards, and we would defer to the EPA's reasonable resolution of that ambiguity...*** (emphasis added)

*Whatever effect may be accorded the gaps in Subpart 2 as implying some limited applicability of Subpart 1, they cannot be thought to render Subpart 2's carefully designed restrictions on EPA's discretion utterly nugatory once a new standard has been promulgated, as EPA has concluded...*

*The EPA may not construe the statute in a way that completely nullifies textually applicable provisions meant to limit its discretion..."*

#### 1.1.2 Equivalence of 1-Hour Ozone Design Values and 8-Hour Ozone Design Values

In a 2003 support document for EPA's proposal to implement the 1997 eight-hour Ozone NAAQS, the EPA used three different methods for translating the 1979 Ozone NAAQS design values into equivalent 1997 Ozone NAAQS design values. These included: 1) using linear regression to determine the equivalence of the design values, 2) comparing the number of counties that would be designated nonattainment under the 1979 Ozone NAAQS to the corresponding number of counties that exceeded a given 8-hour design value, and 3) comparing the population of areas that would be designated nonattainment under the 1979 Ozone NAAQS to the corresponding population in areas with design values over given 8-hour design values. Based on this document, an eight-hour standard of 0.090 ppm would be equivalent to the protection that was provided by the 1-hour standard of 0.12 ppm.

#### 1.1.3 EPA's Phase 1 Implementation Rule for the 1997 Ozone NAAQS

EPA's attempt to fix the issues identified by the U.S. Supreme Court are described in its "Phase I" implementation rule for the 1997 Ozone NAAQS. Under this rulemaking, it took an approach that applied Subpart 2 to any areas with 1-hour design values at or above 0.121 ppm, with classifications being based on their 8-hour design values, while applying Subpart 1 to all other nonattainment areas.

#### 1.1.4 2006 D.C. Circuit Court of Appeals Ruling in *SCAQMD v. EPA*

EPA was challenged on its Phase 1 implementation rule, and the U.S. Court of Appeals for the D.C. Circuit held in *SCAQMD v. EPA* in 2006 that its approach to applying Subpart 1 and Subpart 2 violated the Clean Air Act, insofar as it applied Subpart 1 to areas with air quality at least as bad as Congress had contemplated when it passed the 1990 Clean Air Act Amendments. While, since this ruling, some people have cited this opinion as closing the door to implementing any revised Ozone NAAQS under Subpart 1 for any area, I believe that this is a misreading of the case. Here are some of the relevant quotes from the opinion:

*"The State and Environmental petitioners challenge EPA's resolution of the gap between Subpart 1 and Subpart 2 recognized by the Supreme Court in Whitman 531 U.S. at 483. The State and Environmental petitioners contend that EPA has repeated the errors of the 1997 Rule by promulgating a regulation where 76 of 122 nonattaining areas are projected to be governed by Subpart 1....They further contend that the Act does not support any ozone nonattainment areas being regulated exclusively under Subpart 1. Although Whitman **forecloses the latter contention**, we agree that the manner in which the 2004 Rule treats the relationship between*

*Subpart 1 and Subpart 2 fails to adhere to the statutory scheme enacted by Congress in 1990 to address ground-level ozone in nonattainment areas... (emphasis added)*

*...In other words, the gap identified in Whitman affords EPA discretion only to the extent that an area is nonattaining but its air quality is not as dangerous as the level addressed by the 1990 Amendments, which now translates to 0.09 ppm on the eight-hour scale...*

*...Eight-hour nonattainment areas must be subject to Subpart 2 wherever they have air at least as unhealthful as Congress contemplated when enacting the 1990 Amendments...*

*...For areas with ozone levels between 0.08 and 0.09 ppm, the 2004 Rule overlaps with the gap recognized in Whitman. To this extent, the question under Chevron Step 2 is whether EPA's interpretation, while not required to 'represent the best interpretation of the statute,' is reasonable...*

*...We therefore hold that the 2004 Rule violates the Act insofar as it subjects areas with eight-hour ozone in excess of 0.09 ppm to Subpart 1. We further hold that the EPA's interpretation of the Act in a manner to maximize its own discretion is unreasonable because the clear intent of Congress in enacting the 1990 Amendments was to the contrary."*

Contrary to the suggestion that this ruling forecloses the possibility of implementing the 2015 Ozone NAAQS exclusively under Subpart 1 for some areas, this ruling simply explains the limits on the use of Subpart 1 for areas with 8-hour design values over 0.09 ppm and the relying on maximizing its discretion as the basis for applying Subpart 1 to other areas.

1.1.5 2013 DC Circuit Court of Appeals Ruling in *NRDC v EPA* on PM NAAQS Implementation  
In 2013, the D.C. Circuit Court of Appeals issued a ruling in *NRDC v. EPA* regarding EPA's decision to implement PM<sub>2.5</sub> NAAQS under Subpart 1 rather than Subpart 4. Since this case deals with PM NAAQS rather than the Ozone NAAQS, it doesn't necessarily address the specific issues that arose related to implementation of the Ozone NAAQS, but it does provide additional case law and precedent regarding EPA's authority to implement NAAQS promulgated after the 1990 CAA Amendments under Subpart 1 rather than the more specific Subparts 2 – 5.

While the opinion in this case invalidated EPA's decision to exclusively implement the 1997 and 2006 PM<sub>2.5</sub> NAAQS using Subpart 1, issues specific to PM were the controlling issues in this case, and should not be interpreted to mean that EPA would not be allowed to use Subpart 1 as the exclusive means to implement the 2015 Ozone NAAQS in many areas. The specific issue in *NRDC v. EPA* (2013) was that EPA had used the fact that there was not a PM NAAQS that specifically addressed PM with a diameter of 2.5 microns or less – that Subpart 1 should apply. The court held that, since the 1987 PM NAAQS applied to all PM with a diameter of 10 microns or less, that it also applied to PM NAAQS with a diameter of 2.5 microns or less. Unlike the steps that EPA took for the Ozone NAAQS to translate the 1-hour Ozone NAAQS of 0.12 ppm into a comparable 8-hour Ozone NAAQS design value of 0.09 ppm, the EPA had not attempted to translate the 1987 PM<sub>10</sub> NAAQS design values into equivalent 24-hour and annual PM<sub>2.5</sub> NAAQS design values, which could have provided a way to distinguish the levels of protection for PM<sub>2.5</sub> that Congress contemplated with its adoption of Subpart 4 in the 1990 Clean Air Act Amendments. In fact, the court's decision specifically distinguishes the issues for the PM NAAQS and Ozone NAAQS as they relate to the *Whitman* decision, stating, "the history of the PM<sub>2.5</sub> standard reveals no comparable decision-making process regarding implementation."

The court's ruling in *NRDC v. EPA* does not in any way further constrain the EPA's authority to implement revised Ozone NAAQS using Subpart 1 than the 2006 *SCAQMD v. EPA* decision did.

#### 1.1.6 EPA's Response to Comments on the 2008 Ozone NAAQS Classification Rule

In its Response to Comments on Implementation of the 2008 NAAQS for Ozone: Nonattainment Area Classifications Approach, Attainment Deadlines, and Revocation of the 1997 Ozone Standards for Transportation Conformity Purposes (EPA-HQ-OAR-2010-0885, April 2012), the EPA included the following statements related to Subpart 1 that seem to indicate that, despite the lack of discussion in this rule proposal, the EPA Administrator agreed with the general interpretation of the *South Coast* decision that it did not foreclose the possibility of Subpart 1 implementation of a revised Ozone NAAQS:

*"the court recognized limited authority for EPA to rely solely on subpart 1 for those areas that the statute is not clear must be subject to subpart 2,"*

*"while EPA did consider placing some areas only under the planning requirements of subpart 1, EPA ultimately determined that such an approach was not its preferred approach for the 2008 ozone NAAQS"*

*"for a future ozone NAAQS, EPA may consider placing some areas designated nonattainment solely under the planning provisions of subpart 1"*

*"EPA recognizes that the South Coast court did leave open the possibility that EPA could develop a reasonable basis to subject only to subpart 1 all or certain areas with an 8-hour design value below 0.09 ppm. EPA determined not to pursue such an approach for purposes of implementing the 2008 ozone NAAQS. Doing so, however, does not preclude EPA from pursuing such an approach for any future NAAQS."*

*"The court in South Coast did leave open the possibility to implement the ozone NAAQS under subpart 1. For the 2008 NAAQS we are choosing not to explore the subpart 1 option. For a future ozone NAAQS, EPA may consider an approach under subpart 1."*

*"While subpart 1 does have the advantage from a planning perspective of requiring an attainment plan for all areas, we believe that most of the areas that are classified as Marginal will not need such a plan as they are expected to attain the 2008 Ozone NAAQS without local measures."*

*"To the extent that the commenter is suggesting that the Court in South Coast held that there is no lawful approach to placing certain areas solely under the planning provisions of subpart 1, we disagree...while EPA has chosen not to adopt such an approach for the 2008 ozone NAAQS, it could choose to do so for a future ozone NAAQS."*

EPA has repeatedly suggested that it would at least consider implementing the 2015 Ozone NAAQS in these responses through the notice-and-comment process, but there is nothing in the rulemaking record suggesting that EPA ever gave it any consideration at all. Considering EPA's stated belief that it has the legal authority to consider an alternative approach to implementing the 2015 Ozone NAAQS under Subpart 1 and its prior position that Subpart 1 was a preferable scheme to implementing the 1997 Ozone NAAQS, I believe that EPA has a public duty to at least directly solicit comments on an alternative approach to implementing the 2015 Ozone NAAQS that relies exclusively on Subpart 1 for most areas.

Unfortunately, since EPA did not directly explore or solicit comments on such an approach in this proposal, the requirements of the Administrative Procedures Act mean that the agency would need to either re-propose this rulemaking or issue a supplementary proposal that more directly addresses this

issue in order to consider taking action on it. EPA still has time to consider such an approach and strongly encourage EPA to at least lay out what such an approach might look like and solicit comments on it. I am happy to work with EPA on that if it is interested.

1.1.7 Conclusion Regarding EPA's Legal Authority to Implement the 2015 Ozone NAAQS Using Subpart 1

I believe that the EPA has the legal authority under the Clean Air Act to implement the 2015 Ozone NAAQS under Subpart 1 for any areas with design values of 0.090 ppm or lower, as long as the agency uses a reasonable basis for that interpretation of the Clean Air Act. I believe that it is possible to use the Congressional findings and declaration of purpose in 42 U.S.C. §7401 as a legitimate basis for using Subpart 1 rather than Subpart 2 to implement the 2015 Ozone NAAQS where possible. This section includes the following statements, each of which could and should be evaluated by the EPA to determine the extent to which Subpart 1 or Subpart 2 would be expected to advance or contradict Congressional intent:

*“(a) Findings*

*The Congress finds – ...*

*(3) that air pollution prevention (that is, reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments...*

***(b) Declaration***

*The purposes of this subchapter are –*

*(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population...*

*...(4) to encourage and assist the development of regional air pollution prevention and control programs*

***(c) Pollution Prevention***

*A primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this chapter, for pollution prevention.”*

Insofar as implementation of the 2015 Ozone NAAQS under Subpart 2 could result in slower air quality improvements that implementation under Subpart 1, I believe that EPA could justify this approach on legally valid air quality grounds. By both potentially discouraging voluntary pollution prevention (discussed below in the discussion of RFP requirements under Subpart 2) and by delaying the planning and emission reductions that may be required to bring many areas on the higher end of the “Marginal” classification range for the 2015 Ozone NAAQS into attainment of the standard expeditiously, Subpart 2 could very plausibly be argued to produce worse air quality outcomes than Subpart 1. Therefore, the EPA could justify using Subpart 1 on air quality grounds, which I believe the courts would defer to EPA on.

## 1.2 Why Subpart 1 is Preferable to Subpart 2

As will be discussed in more detail on specific issues below, the implementation of the 2015 Ozone NAAQS using Subpart 2 for the nonattainment areas that the courts have acknowledged that EPA has the authority to use Subpart 1 for would result in delays in implementing reasonable emission reduction measures in nonattainment areas and would discourage states and local governments from taking voluntary action to reduce emissions in areas designated as attainment or unclassifiable, both of which would prolong high ozone levels in nonattainment areas and put attainment and unclassifiable areas at a higher risk for violating the Ozone NAAQS in the future. This would also postpone the co-benefits associated with reducing ozone-forming emissions within this time frame. Lastly, to the extent that there are limited resources to conduct air quality planning activities, an efficient use of those resources to conduct air quality planning and rulemaking is important in ensuring that nonattainment areas expeditiously come into attainment of the NAAQS.

Under Subpart 1, states must submit attainment plans for all nonattainment areas, whereas Subpart 2, as it has been interpreted by EPA, only requires attainment plans for nonattainment areas classified as "Moderate" or higher. Of the 57 hypothetical nonattainment areas for the 2015 Ozone NAAQS identified by EPA, only 10 of those areas would be classified as "Moderate" or higher, leaving no requirement for an attainment plan for the other 47 areas. Of the areas with 2015 Ozone design values that would put them in a "Marginal" classification, 13 have design values above the 2008 Ozone NAAQS. Considering the pace of ozone reductions in these areas year-over-year over the past five years, an average of 1 ppb per year, it is likely that at least half of these areas will not be able to attain the 2015 Ozone NAAQS by 2020 as would be required by Marginal areas. This puts those areas at risk of being "bumped up" to a "Moderate" classification with a requirement to attain the 2015 Ozone NAAQS by 2023. The attainment SIP for this type of area would not likely be due until 2022, whereas the attainment SIP for a Subpart 1 nonattainment area is due no later than three years after designations, and EPA has the discretion to require earlier submission of an attainment plan in such circumstances. In this way, air quality improvements necessary to bring a nonattainment area into attainment would be more likely to occur sooner under Subpart 1 implementation than Subpart 2 implementation if the area is classified as Marginal.

Also, to the extent that an area classified as "Moderate" or higher is not required to attain the NAAQS until six years after designation, whereas a Subpart 1 nonattainment area would have up to five years to attain the NAAQS, emission reduction measures would be implemented in an area quicker under a Subpart 1 implementation scheme if it had a 5-year attainment deadline compared to the date that would be required for a moderate or higher classification under a Subpart 2 implementation scheme. It's true that under Subpart 1, (42 USC §7502(a)(2)(A)) the EPA has the discretion to extend the 5-year deadline out to as much as 10 years, "considering the severity of nonattainment and the availability and feasibility of pollution control measures." However, EPA's baseline scenario in its 2025 modeling for the 2015 Ozone NAAQS Regulatory Impact Analysis (RIA) strongly suggests that many areas that are classified as "Marginal" or "Moderate" would still not be expected to be attaining the 2015 Ozone NAAQS by 2025 without additional controls, suggesting that such areas would be at risk for being bumped up from "Serious" to "Severe," with an attainment deadline 15 years after designation (i.e., 2032), rather than the maximum 10-year deadline (2027) allowed under Subpart 1. Since there is no requirement for a SIP at all for "Marginal" areas in EPA's interpretation of Subparts 1 and 2, EPA's decision to implement the NAAQS under Subpart 2 could postpone the implementation of the controls

necessary for such areas (like Houston) by as many as 5 years beyond when they might be required under Subpart 1.

## 2 Specific Subpart 2 Issues

### 2.1 VOC emissions reductions are not effective at reducing ozone in many areas

For many parts of the country, VOC reductions would do little to reduce ambient 8-hour ozone concentrations. Yet the regulatory requirements under Subpart 2 focus heavily on VOC reductions based on the scientific understanding of ozone formation with respect to peak 1-hour ozone concentrations at the time the 1990 Clean Air Act amendments were passed. In EPA's Regulatory Impact Analysis (RIA) for the final 2015 Ozone NAAQS, it included modeling of the impact of a 50% reduction in U.S. VOC emissions. As detailed in the modeling results spreadsheet (EPA-HQ-OAR-2013-0169-0029), a 50% across-the-board reduction in VOC emissions for the entire U.S. only reduced the projected 2025 design values for the San Antonio area by only 0.7 ppb.

Similarly, photochemical modeling performed by AACOG in 2015 showed that a 75% reduction in VOC emissions within the San Antonio-New Braunfels MSA would only achieve a 0.56 ppb reduction in the region's ozone design value, and the area's sensitivity to local NO<sub>x</sub> emissions reductions is over 34-41 times higher than local VOC reductions on a ppb/tpd basis.<sup>1</sup> A 15% VOC reduction of the region's 2018 VOC emissions level would achieve about a 0.12 ppb reduction in the region's design value, the same ozone reduction that a 0.7% reduction in NO<sub>x</sub> emissions using the sensitivities calculated for a 25% reduction in VOC and NO<sub>x</sub> emissions.

Considering the very limited benefits of anthropogenic VOC emission reductions for reducing ground-level ozone in many potential nonattainment areas, including the San Antonio area, it doesn't seem like a good use of limited federal, state, and local resources to focus on the 46 different VOC control for "Moderate" areas (out of a total of 53 total requirements on EPA's "SIP Status" checklists) rather than NO<sub>x</sub> controls if an area's ozone formation is NO<sub>x</sub>-limited.

One test EPA could use to evaluate whether to give an area a "VOC waiver" would be to determine if the 15% VOC reduction contemplated for the Moderate area classification would be expected to achieve at least a 0.7 ppb reduction in an area's design value. This value (1% of the NAAQS) is what EPA currently uses as the basis for screening whether one state's emissions are having a "significant" contribution to nonattainment downwind and should be evaluated for potential control measure implementation obligations. Using EPA's modeling for the 2015 Ozone NAAQS RIA and scaling the impact of a nationwide 50% reduction in VOC emissions back to 15%, it appears that most or all of the areas where a 15% reduction in VOC emissions would be expected to have at least that level of impact would be existing nonattainment areas for the 2008 Ozone NAAQS. Based on our research, these areas are already designated nonattainment for the 2008 Ozone NAAQS or are near/adjacent to 2008 Ozone NAAQS nonattainment areas. The only counties that had baseline DVs > 70.9 ppb in 2025 and had at least a 0.7 ppb impact from a 15% nationwide reduction in VOC emissions that were not already designated nonattainment for the 2008 Ozone NAAQS were:

- ☐ LaPorte County, Indiana (estimated 1.1 ppb impact from a 15% nationwide VOC reduction)
- ☐ Essex County, Massachusetts (estimated 0.7 ppb impact)

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<sup>1</sup> <http://aacog.com/DocumentCenter/View/34698> see tables 2-4 and 4-2.

- ☐ Allegan County, Michigan (estimated 0.8 ppb impact)
- ☐ Berrien County, Michigan (estimated 1.0 ppb impact)
- ☐ Manitowoc County, Wisconsin (estimated 0.9 ppb impact)
- ☐ Milwaukee County, Wisconsin (estimated 1.7 ppb impact)
- ☐ Osaukee County, Wisconsin (estimated 1.2-1.7 ppb impact, depending on monitor)
- ☐ Racine County, Wisconsin (estimated 2.0 ppb impact)

For Bexar County, on the other hand, a 15% nationwide VOC reduction would only achieve a 0.2 ppb reduction in the County's 2025 design value. Of the 86 monitoring stations projected to be exceeding 70.9 ppb in 2025 in the baseline scenario, only 31 of the stations showed impacts of at least 0.7 ppb in response to a nationwide reduction in VOC emissions of 15%. This suggests that for any of the other areas, including much of Texas, EPA should not require RACT or RFP demonstrations for VOC emissions. The mobile source emission reduction budgets that get set in SIPs with VOC controls in them can result in transportation conformity problems that can only be addressed with VOC reductions, despite the extremely limited ozone reduction benefit such controls might achieve. Waiving such requirements where possible would free up valuable resources to focus on far more-effective NO<sub>x</sub> controls for such areas.

One of the more extensive sets of rules required under Subpart 2 is the requirement to implement RACT rules for any source category covered by a CTG, with emission rates described in CTGs being considered presumptively RACT. Many of these CTGs use cost-per-ton analyses as a way of assessing what requirements are "reasonable." In light of the very limited impact that VOC controls may have in many nonattainment areas, the EPA should re-evaluate all CTGs in order to require a lower cost/ton threshold be used to determine whether a certain level of control should be considered presumptively RACT. For example, the EPA used a \$1,400 cost per ton of NO<sub>x</sub> ratio as the threshold for the 2008 Ozone NAAQS CSAPR update. If NO<sub>x</sub> emissions reductions are 30 times more effective at reducing ozone than VOC emissions reduction, the equivalent cost/ton ratio for VOC emissions would be \$47. EPA has considerable discretion in creating and revising CTGs, and could presumably set one set of standards/guidelines for areas that are VOC-limited and another for areas that are NO<sub>x</sub>-limited.

## 2.2 Issues Related to Subpart 2 Reasonable Further Progress Requirements

One of the issues that a newly designated nonattainment area might face is the need to adopt VOC-specific controls in order to meet the requirement for a 15% reduction in anthropogenic emissions within 6 years as part of the RFP requirements for "Moderate" Ozone Nonattainment areas under Subpart 2. In its 2015 Ozone NAAQS RIA, EPA projects that Bexar County's 2025 "baseline" design value will be 71.2 ppb without any additional emission reductions implemented beyond the existing set of regulations in place. This implicitly assumes that, without such additional controls implemented in San Antonio or other areas contributing to San Antonio's ozone level by 2020, it would not be able to attain the 70 ppb standard by 2020 as would be required if it is designated nonattainment with a Marginal classification for the 2015 Ozone NAAQS. If that happens, the San Antonio area would be bumped up to a "Moderate" classification and would be required to submit a RFP SIP revision demonstrating that the area would achieve a 15% reduction in anthropogenic VOC emissions by 2023 compared to a 2017 baseline.

### 2.2.1 VOC reductions forced solely by the 15% RFP requirement

Using the emissions data EPA used for its recent photochemical modeling, it looks like none of the four metro areas in Texas at risk for a nonattainment designation for the 2015 Ozone NAAQS are expected to achieve enough VOC reductions between 2017 and 2023 in order to achieve a 15% VOC reduction without additional, VOC-specific emission reduction. The following table shows the projected shortfall in VOC emission reductions for the existing two nonattainment areas for the 2008 Ozone NAAQS and for the El Paso and San Antonio MSAs, both of which have preliminary 2014-2016 design values over 70 ppb, putting the areas at risk for a nonattainment designation.<sup>2</sup>

Table 2-1. VOC Reductions Required for Subpart 2 RFP in Potential Texas Nonattainment Areas

Area	2017 VOC (tpy)	2023 VOC (tpy)	Change 2017-2023 (tpy)	15% VOC Reduction from 2017	Reduction Deficit (tpy)
<b>DFW 2008 O<sub>3</sub> NAA</b>	126,825	113,632	-9,895	-19,024	-9,129
<b>El Paso MSA</b>	11,626	10,794	-832	-1,744	-912
<b>HGB 2008 O<sub>3</sub> NAA</b>	175,873	175,584	-289	-26,381	-26,092
<b>San Antonio-New Braunfels MSA</b>	67,528	64,356	-3,172	-10,129	-6,957

Based on an average cost/ton ratio of \$13,414.40 for VOC reductions as described in the RIA for the 2015 Ozone NAAQS<sup>3</sup>, this would result in approximately the following annual costs to each region:

- ☐ DFW: \$122 million
- ☐ El Paso: \$12 million
- ☐ HGB: \$350 million
- ☐ San Antonio-New Braunfels: \$93 million

While EPA's implementation rule provides a mechanism for the DFW and HGB areas to use NO<sub>x</sub> reductions rather than VOC reductions, and the El Paso area's 71 ppb design value makes it much less likely to face this problem, EPA's proposed implementation rule provides no such flexibility for the San Antonio area. Within the San Antonio area, each of the 8 counties in the MSA would face a shortfall of VOC reductions between 2017 and 2023 in order to reach a 15% reduction requirement, as the table below shows.

<sup>2</sup> 2017 and 2025 emissions estimates were obtained on 11/21/2016 from emissions reports for EPA's 2011v6.2 emissions modeling platform 2017eh\_county\_SCC7\_sector\_report.csv.zip and 2025eh\_county\_SCC7\_sector\_report.csv.zip available online at <ftp://ftp.epa.gov/EmissionInventory/2011v6/v2platform/reports/>. Wildfire and biogenic emissions were not included in the totals. 2023 emissions were interpolated from the 2017 and 2025 emissions. The El Paso MSA includes El Paso and Hudspeth counties. The San Antonio-New Braunfels MSA includes Atascosa, Bander, Bexar, Comal, Guadalupe, Kendall, Medina, and Wilson Counties.

<sup>3</sup> Based on VOC emission reductions identified in Table 3A-9 and costs for identified VOC controls in Table 4A-2. EPA-HQ-OAR-2013-0169-0057. Available online at: <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0169-0057&disposition=attachment&contentType=pdf>.



Andrew Hoekzema Comments on EPA's Proposed Implementation Rule for the 2015 Ozone NAAQS  
EPA-OAR-2016-0202

*Table 2-2. VOC Reductions Required for Subpart 2 RFP in a Potential San Antonio-New Braunfels MSA Nonattainment Area*

County	2017 VOC (tpy)	2023 VOC (tpy)	Change 2017-2023 (tpy)	15% VOC Reduction from 2017	Reduction Deficit (tpy)
<b>Atascosa</b>	9,298	9,177	-121	-1,395	-1,274
<b>Bandera</b>	436	384	-51	-65	-14
<b>Bexar</b>	34,913	32,542	-2,371	-5,237	-2,866
<b>Comal</b>	2,618	2,442	-176	-393	-217
<b>Guadalupe</b>	8,602	8,455	-146	-1,290	-1,144
<b>Kendall</b>	820	747	-73	-123	-50
<b>Medina</b>	5,595	5,459	-135	-839	-704
<b>Wilson</b>	5,247	5,148	-99	-787	-688
<b>TOTAL</b>	<b>67,528</b>	<b>64,356</b>	<b>-3,172</b>	<b>-10,129</b>	<b>-6,957</b>

The estimated annual cost of these additional VOC reductions that would be required for each county are shown below:

- ☐ Atascosa County: \$17.1 million
- ☐ Bandera County: \$0.2 million
- ☐ Bexar County: \$38.4 million
- ☐ Comal County: \$2.9 million
- ☐ Guadalupe County: \$15.3 million
- ☐ Kendall County: \$0.7 million
- ☐ Medina County: \$9.4 million
- ☐ Wilson County: \$9.2 million

While these estimates for the San Antonio area do not directly account for all of the VOC reductions that would be expected to be achieved through adoption of all of the RACT requirements for VOC sources covered by a Control Technique Guideline (CTG) or emission reductions that would be expected to occur in Bexar County as a result of the vehicle emissions inspection and maintenance (I/M) program, our analysis suggests that there would still likely be a substantial requirement to reduce VOC emissions beyond what these would achieve just for Subpart 2 RFP purposes, since there would only be a 5% reduction in VOC emissions expected between 2017 and 2023 with existing controls. An I/M program in Bexar County would likely only achieve 578 tpy in VOC reductions, assuming a 12% reduction in VOC emissions from gasoline-powered vehicles, leaving 80% of the VOC emission reduction obligation in Bexar County and 92% for the MSA unaddressed.

One way that the EPA could address this would be to allow substitution of NO<sub>x</sub> emissions that would achieve an equivalent reduction in ozone as a 15% reduction in VOC emissions would achieve. As was discussed earlier, a 15% VOC reduction of the region's 2018 VOC emissions level would achieve about a 0.12 ppb reduction in the region's design value, the same ozone reduction that a 0.7% reduction in NO<sub>x</sub> emissions using the sensitivities calculated for a 25% reduction in VOC and NO<sub>x</sub> emissions. This would

ensure that this requirement didn't result in over-regulation and a misguided focus on VOC emission reductions in the planning process for an area where ozone is NO<sub>x</sub>-limited.

Alternatively, allowing for a more direct NO<sub>x</sub> substitution – achieving a 15% reduction in NO<sub>x</sub> emissions between 2017 and 2023, rather than a 15% reduction in VOC emissions – would be preferable to forcing VOC-specific reductions. This concept was used by TCEQ and EPA in the DFW area's "Serious" classification RFP SIP revision for the 1997 8-Hour Ozone NAAQS. EPA approved this RFP SIP revision despite it showing that the region's VOC emissions would exceed the target that would be required for a 15% reduction in VOC emissions. EPA in part justified this by explaining that a "Serious" area was allowed to do NO<sub>x</sub> substitution for the additional 9% reduction required beyond the 15% VOC reduction needed for "Moderate" areas. This meant that the DFW area was allowed to have higher VOC emissions as a "Serious" area than it would have if it was a "Moderate" area and EPA did not allow for NO<sub>x</sub> substitution. EPA also is proposing to allow for substitution of NO<sub>x</sub> and VOC emission reductions as part of the NNSR permitting process, suggesting that a similar approach for RFP requirements might be worth considering.

In its implementation rule for the 2008 Ozone NAAQS, the EPA allowed "Moderate" areas to use NO<sub>x</sub> reductions for their RFP plans rather than VOC, but only if the area had previously received a approval for a 15% VOC reduction at some time in the past for the 1979 1-Hour Ozone NAAQS or the 1997 8-Hour Ozone NAAQS. For any newly designated nonattainment area for the 2008 Ozone NAAQS with a "Moderate" classification, the area could only meet this requirement with VOC reductions, regardless of their effectiveness at reducing the area's ozone levels. At the time, the universe of areas that faced this situation was such that almost every single county that wound up with a "Moderate" designation had previously been part of an approved 15% VOC reduction plan, and therefore the practical effect of this requirement wasn't very significant. However, as outlined above, applying this same approach to the 2015 Ozone NAAQS has the potential for over-regulating VOC emissions in newly designated nonattainment areas, especially since these areas will not be able to rely on fleet turnover from the implementation of existing regulations in order to achieve this target.

Allowing for NO<sub>x</sub> substitution or allowing an area to demonstrate that it had in fact achieved a 15% reduction in VOC emissions at some time in the past would be important and valuable ways that EPA could exercise some discretion and flexibility in implementing the new Ozone NAAQS so as to minimize any unnecessary costs and regulatory burdens for newly designated nonattainment areas.

#### 2.2.2 Subpart 2 RFP requirements penalize early action

The other problem that the Subpart 2 RFP requirement presents is the way in which it can penalize, and thereby discourage, early action. The San Antonio area, for example, implemented about 7 tpd of VOC emission reductions in 2007 as part of its 2004 Early Action Compact (EAC) State Implementation Plan (SIP) revision, out of a total of 180 tpd of anthropogenic VOC emissions.<sup>4</sup> The following table illustrates how these emission reductions, by reducing the area's baseline emissions, would result in a "penalty" for the area for Subpart 2 RFP purposes if 2007 or any year after implementation of the emission reductions was used as an RFP baseline.

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<sup>4</sup> See table 5.1-1. [https://www.tceq.texas.gov/assets/public/implementation/air/sip/sipdocs/200406-SA/SAT\\_narr\\_261004.pdf](https://www.tceq.texas.gov/assets/public/implementation/air/sip/sipdocs/200406-SA/SAT_narr_261004.pdf)

Table 2-3. Illustration of Subpart 2 RFP Early Action Penalty

RFP Data Point	Early Action	No Early Action
<b>A. 2007 Uncontrolled VOC Emissions (tpd)</b>	180	180
<b>B. 2007 VOC Emission Reductions Implemented (tpd)</b>	7	0
<b>C. 2007 Baseline VOC Emissions used for RFP (tpd) (A – B)</b>	173	180
<b>D. 15% VOC Reduction from 2007 Baseline (tpd) (15% * C)</b>	26	27
<b>E. RFP VOC Emissions Target Six Years from Baseline (tpd) (C – D)</b>	147	153
<b>F. Total Emission Reductions Required Relative to Uncontrolled Baseline (tpd) (A – E)</b>	33	27

The table above shows how the San Antonio area's early implementation of 7 tpd of VOC controls that were incorporated into the SIP under the area's EAC SIP produces a 5 tpd VOC reduction penalty in that the area would need to implement an additional 5 tpd of VOC reductions relative to an "uncontrolled" emissions scenario as a result of a lower VOC emissions baseline.

This feature of the RFP requirements also applies to any NO<sub>x</sub> controls, since again, any voluntary reduction of NO<sub>x</sub> emissions in a baseline year would result in a lower NO<sub>x</sub> emissions target than if the area had never implemented those controls. Therefore, while NO<sub>x</sub> substitution approaches may address the fact that VOC controls aren't effective at controlling ozone in some areas, but it wouldn't address the absurd result of penalizing early action that the EPA's interpretation of the RFP requirements would entail. This early-action "penalty" is only avoidable if EPA:

1. Allows for the implementation of Subpart 1 RFP requirements rather than Subpart 2 RFP requirements, even if EPA uses Subpart 2 for all other aspects of implementing the 2015 Ozone NAAQS;
2. Constrains the emission reduction requirements of Subpart 2 RFP such that they are not beyond what would be necessary for the area to attain the NAAQS, consistent with the definition of RFP in Subpart 1;
3. Waiving the Subpart 2 RFP requirements for areas that participated in the Early Action Compact SIP process or previously achieved a 15% reduction in VOC emissions within 6 years at any time between 1990 and 2017 (which still may not resolve the issue); or
4. Allows state to remove voluntarily implemented emission reduction measures from the RFP baseline in order to enable the state and those areas to take full credit for having already implementing such measures;

For the San Antonio area, some specific measures included in the SIP that would affect the region's VOC or NO<sub>x</sub> baseline include:

- ☐ A 25,000 gallons/month applicability level for Stage I refueling in Bexar, Comal, Guadalupe, and Wilson Counties in 30 TAC, Chapter 115, Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities, which reduces VOC emissions to the extent that stations with between 25,000 gallons/month and 100,000 gallons per month (the federal applicability level) are required to have vapor balance systems that would not otherwise be required to do so under

state or federal law. This control was estimated to achieve up to 2.99 tpd of VOC reductions in 2007 in these four counties.

- Degreasing Controls in Bexar, Comal, Guadalupe, and Wilson Counties in 30 TAC Chapter 115, Subchapter E, Solvent-Using Processes, Division 1, Degreasing Processes. This control was estimated to achieve up to 4.61 tpd of VOC reductions in 2007 in these four counties.<sup>5</sup>
- Texas Emission Reduction Plan (TERP) grants for projects primarily operating in Bexar, Comal, Guadalupe, and Wilson Counties. Currently active projects are expected to be reducing 2017 NO<sub>x</sub> emissions by 2.46 tpd.<sup>6</sup>

The 6.46 tpd VOC reduction penalty associated with the Stage I vapor recovery and degreasing controls would equate to approximately \$32 million per year in additional costs based on the \$13,414 per ton average cost per ton of VOC controls described in the 2015 Ozone NAAQS RIA, and the 2.02 tpd of NO<sub>x</sub> emission reductions from the TERP program would equate to \$20 million per year in penalties based on a \$10,000 per ton of NO<sub>x</sub> reduction ratio used for the TERP rebate program.

If the EPA chooses to interpret these requirements in such a way that results in the San Antonio area needing to pay an extra \$20-\$32 million in pollution control costs to fulfill this specific requirement because they took early action, it will send a powerful signal to all of the other areas with ozone levels on the edge of violating the 2015 Ozone NAAQS that they had better think twice before voluntarily implementing emission reduction measures, because they could wind up penalized for the decision later. This is contrary to Congressional intent in the Clean Air Act. This particular situation shows another “gap” between the Subpart 2 scheme intended to apply areas designated nonattainment in 1991 for the 1-hour Ozone NAAQS and the situations faced by areas that are designated nonattainment for a more stringent ozone NAAQS 26 years later, and the EPA should take special steps in this rulemaking to avoid this absurd result.

### 3 Analysis of EPA's Proposed Options for Revocation of the 2008 Ozone NAAQS

EPA proposed two options for revoking the 2008 Ozone NAAQS:

1. Revoking the 2008 Ozone NAAQS for all areas of the country 1 year after the effective date of initial area designations for the 2015 Ozone NAAQS
2. Revoking the 2008 Ozone NAAQS for all areas of the country that were designated as “attainment” or “unclassifiable” for that standard 1 year after the effective date of the initial area designations for the 2015 Ozone NAAQS, and upon redesignation to attainment for existing nonattainment areas

The main impact that the resolution of this issue would have on the San Antonio and Austin metro areas would be the impact it has on the planning requirements for the existing ozone nonattainment areas and the time table for reducing emissions in those areas. If EPA chose option 1, it would effectively postpone the emission reductions that would otherwise be required from existing nonattainment areas,

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<sup>5</sup> See table I-2. [https://www.tceq.texas.gov/assets/public/implementation/air/sip/sipdocs/200406-SA/033104\\_AppI\\_CleanAirStrats.pdf](https://www.tceq.texas.gov/assets/public/implementation/air/sip/sipdocs/200406-SA/033104_AppI_CleanAirStrats.pdf)

<sup>6</sup> <https://www.tceq.texas.gov/airquality/terp/leg.html>. Accessed 11/23/2016.

especially areas classified as "Moderate" for the 2008 Ozone NAAQS that fail to attain that NAAQS by the end of 2017.

These areas would otherwise be automatically "bumped up" to a "Serious" classification with a State Implementation Plan (SIP) revision due within 1 year demonstrating that the area would be able to attain the 2008 Ozone NAAQS no later than the end of the 2020 ozone season and further reduce emissions of NO<sub>x</sub> or VOC by at least 9% by 2020. This would also apply more stringent permitting requirements and pollution control requirements for point sources in those areas, increasing the offset ratio for Nonattainment New Source Review from the 1.15 to 1 ratio for "Moderate" areas to 1.2 to 1, and lowering the "major source" threshold from 100 tpy of emissions to 50 tpy. If, as EPA projects, some of these areas would still not be attaining the 2008 Ozone NAAQS by 2020, these areas would be bumped up again to "Severe," with yet more stringent pollution control requirements.

Under option 2, all of these requirements would remain an obligation for the state and these areas until the area attained the 2008 Ozone NAAQS and was formally redesignated from "nonattainment" to "attainment." This would ensure that the emission reductions that would have been required from these areas occur at least as quickly as they would have occurred if EPA had left the 2008 Ozone NAAQS in place in its 2015 review. Using option 1 would create a strange situation in which the emission reductions required from such areas and the controls that would apply to such areas would actually be less stringent than if the 2008 Ozone NAAQS had been retained, despite the 2015 Ozone NAAQS being a more stringent ambient air quality standard.

**Since option 1 would effectively postpone emission reductions that would otherwise be required for existing nonattainment areas, and these emission reductions can and should reduce the background ozone levels for Central Texas and many other parts of the country, option 2 is preferable for revoking the 2008 Ozone NAAQS.**

#### 4 Analysis of EPA's Proposed Classification Approach

Particularly if EPA does revoke the 2008 Ozone NAAQS one year after initial area designations, its proposed classification approach and SIP requirements for the 2015 Ozone NAAQS could significantly postpone emission reductions that will be necessary to attain the NAAQS compared other approaches. A key issue is the lack of SIP requirements for "Marginal" areas and the timing of a reclassification SIP revision if an area misses its attainment date. On average, nonattainment areas for the 2008 Ozone NAAQS have seen average annual ozone design value reductions of about 1 ppb between the 2008-2010 design values and the 2013-2015 design values. This strongly suggests that areas with design values of 76-80 ppb, which would be classified as "Marginal" under the EPA's proposed approach, would be getting set up to fail to attain the NAAQS and get "bumped up" to "Moderate." For an area like Houston, with a year-round ozone season, this would mean the following timeline:

December 31, 2020:	End of Houston 2020 ozone season
May 1, 2021:	Deadline for state to certify 2020 monitoring data
November 1, 2021:	Deadline for EPA to issue reclassification notice for Houston if it failed to attain the NAAQS based on certified 2020 monitoring data
November 1, 2022:	Deadline for state to submit revised SIP for "Moderate" area
January 1, 2023:	Start of Houston's 2023 ozone season
December 31, 2023:	End of Houston's 2023 ozone season

This timeline significantly constrains the options that the state can consider for implementation as part of its attainment demonstration. It delays the emission reductions that an area like Houston or Dallas would need to achieve to attain the 2015 Ozone NAAQS by 1-2 years compared to if they had been classified as "Moderate" or implemented under Subpart 1, and 3 years later than if the EPA had continued to implement the 2008 Ozone NAAQS for those areas. The short time frame between when the "reclassification" SIP is due and the beginning of the last ozone season used to determine if the area has attained the NAAQS also may cause the area to fail to attain the NAAQS by the "Moderate" area attainment date due to the inability to put new control measures in time. Thus, a "Marginal" classification for an area with a high design value puts an area at a higher risk for winding up with a "Serious" classification than if it had just been classified as "Moderate" to begin with.

Under 42 U.S.C. §7511a, ozone nonattainment areas classified as "Marginal," are exempted from any planning requirements, including the requirement under 42 U.S.C. §7509 that SIP revisions for nonattainment areas include contingency measures. This puts states and the EPA in a challenging situation for these areas. Doing SIP planning and putting contingency measures in place voluntarily to ensure that a "Marginal" area does attain the NAAQS by its attainment date is a significant undertaking for states, and they are not likely to do this planning unless required to do so by EPA. For EPA's part, the Subpart 2 restriction on what can be required from Marginal areas handcuffs EPA from taking more proactive steps to prompt states to revise the SIP to ensure that these areas attain the NAAQS as expeditiously as practicable.

These problems generally point to problems with the Subpart 2 scheme in general, and the superiority of the Subpart 1 requirements from a planning perspective. If EPA is going to implement the 2015 Ozone NAAQS for all areas under Subpart 1, however, there are modifications of its approach that could substantially improve this process and avoid situations in which areas wind up getting set up to fail.

#### 4.1 Use authority to unilaterally move an area's classification up

Under 42 U.S.C. §7511, the EPA has the authority to move up an area's classification from "Marginal" to "Moderate" if its design value is 76-80 ppb, which is within 5% of the 80 ppb/81 ppb threshold that EPA is using to separate these areas. Any area with at least a 76 ppb design value is already in violation of the prior 2008 Ozone NAAQS and putting such loosening the planning requirements for areas to implement a more stringent NAAQS does not make sense in light of the Clean Air Act's anti-backsliding requirements. A Moderate nonattainment area for the 2008 Ozone NAAQS with a 76-80 ppb design value would have had to submit an attainment demonstration for a "Serious" classification sometime in 2019 if it failed to attain the 2008 Ozone NAAQS by the end of 2017. States will have submitted uncertified 2017 monitoring data by the end of the 90-day window EPA will have to make these classification adjustments. It should use this discretion to help ensure that areas unlikely to attain the 2015 NAAQS by 2020 are not set up for failure by virtue of a "Marginal" classification. While states have the option of implementing new controls for "Marginal" areas, it is not safe to assume that they will.

#### 4.2 Alternative classification approach – use similar distribution of areas among classifications to 1990 Clean Air Act Amendments

In an August 26, 2008, letter, the TCEQ submitted a letter to EPA proposing an alternative classification approach for the 2008 Ozone NAAQS that deserves to be considered for this NAAQS. The letter stated, "a superior alternative to a simple translation scheme like that employed in 2004 would be one which

assigns areas to classifications in proportion to the original 1991 classifications.” The distribution of the initial classifications was as follows:

- ☐ Marginal – 43 areas, 44%
- ☐ Moderate – 31 areas, 32%
- ☐ Serious – 14 areas, 14%
- ☐ Severe – 9 areas, 9%
- ☐ Extreme – 1 area, 1%

If EPA assigned areas designated nonattainment areas for the 2015 Ozone NAAQS to each classification proportionate to the distribution of nonattainment areas following the 1990 Clean Air Act amendments, it would result in the following thresholds:

- ☐ Marginal: 71-73 ppb, 26 areas (46%)
- ☐ Moderate: 74-78 ppb, 14 areas (30%)
- ☐ Serious: 79-83 ppb, 11 areas (14%)
- ☐ Severe: 84-98 ppb, 5 areas, (9%)
- ☐ Extreme: 99 ppb or higher, 1 area (2%)

The letter states, “In 2004, the EPA could have applied a more technically reasoned approach to developing a new classification scheme congruent with Congress’ original intent to distribute areas into all six classifications. Instead, the EPA simply adopted a linear translation of a scheme developed for a different ozone problem.”

While it is true that areas can voluntarily request “bump-ups,” this is a politically difficult decision for states to make, as EPA’s proposal for the 2015 Ozone NAAQS classification approach for California implicitly acknowledges. Particularly since EPA has the option of moving an area into a different classification within 90 days of initial area designation if its design value is within 5% of the next higher or lower classification, it could further adjust the initial area classifications using this approach in ways that would better tailor each area’s requirements to their circumstances.

## 5 Support for Approach to 179B Petitions

An ENVIRON analysis of the contribution of foreign emissions outside of North America to peak 8-hour O<sub>3</sub> concentrations in El Paso, Dallas, and Houston showed a 1.4–1.8 ppb contribution in 2018.<sup>7</sup> EPA’s modeling of 2017 O<sub>3</sub> levels and contributions for the Cross-State Air Pollution Rule (CSAPR) Update for the 2008 Ozone NAAQS showed that the portions of Mexico and Canada within the modeling domain contributed another 0.27 ppb to the San Antonio area’s design value, with contributions of 1.26 ppb in nearby Bell County. However, this may significantly understate the impact of emissions from these countries in light of the limited extent to which the modeling domain included these countries.

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<sup>7</sup> ENVIRON International Corporation. *Foreign Contribution to Texas’ Ozone* Prepared for Jim Smith, Texas Commission on Environmental Quality. August 2013.  
<https://www.tceq.texas.gov/assets/public/implementation/air/am/contracts/reports/pm/5821110365FY131420130831-environ-foreignContributionsTexasOzone.pdf> Accessed 11/29/2016.

Figure 1. Map of the CAMx modeling domain used for transport modeling



Other studies suggest that contributions from Mexico from outside of the modeling domain could be significant enough to enable Bexar County to demonstrate that it would be attaining the 2015 Ozone NAAQS “but for” foreign emissions.<sup>8</sup>

EPA is seeking comment in this rulemaking on whether the opportunity for 179B demonstrations should be limited to nonattainment areas adjoining international borders, and the technical and legal basis for determining whether this limitation would be appropriate. I do not believe that this option should be limited only to nonattainment areas adjacent to border areas. Ozone is transported over long distances and I have found nothing in the Clean Air Act or case law that would suggest that Congress intended that this remedy only be available to nonattainment areas that had actual boundaries adjacent to an international boundary. If EPA is concerned that the title of this section related to “International Border Areas” should constrain consideration of areas to some extent, then I believe that they should at least allow for any area of a state that borders another country to use a 179B petition for nonattainment areas within their territory, rather than only nonattainment areas adjacent to a nonattainment area.

## 6 Issues with Timing of Effective Date of Designations

There are some challenging issues that EPA and states face related to the timing of initial area designations and how they interact with this rulemaking in light of recent court cases. If the effective date of initial area designations is earlier than January 1, 2018, the court opinion in *NRDC v. EPA* in 2014 may force EPA to use the 2017-2019 design values as the basis for determining if a Marginal area has attained the 2015 Ozone NAAQS by its attainment date, rather than using the 2018-2020 design values as it seems to be planning on doing.

<sup>8</sup> <http://www.atmos-chem-phys.net/10/6195/2010/acp-10-6195-2010.pdf>



42 U.S.C. §7509 (Section 179 of the CAA) describes the process for addressing an area's failure to attain a NAAQS by its attainment date. Specifically, 42 U.S.C. §7509(c)(1) requires EPA to make a determination if an area has failed to attain a NAAQS by its attainment date within six months after that date. In EPA's initial implementation rule for the 2008 Ozone NAAQS, it allowed areas until the end of 2015 to attain the 2008 Ozone NAAQS if they were "Marginal" areas, and until the end of 2018 to attain if they were "Moderate" areas, etc., based on an effective date for designations on July 20, 2012. In 2013, NRDC challenged EPA's schedule, arguing that the relevant years should actually be a year earlier, since the "attainment date" had to be based strictly on the effective date of designations, and the most recently certified air quality data available at those times would be the prior year's. The U.S. Court of Appeals for the D.C. Circuit ruled against the agency's approach to attainment dates in *NRDC v. EPA* (2014), stating, "under the applicable regulations, each calendar year of data must include measurements spanning that year's full ozone season. As a result, if the attainment deadline falls during an ozone season, the data for that entire year cannot be used in the calculation."

If EPA intends on sticking to a two-year timetable for designating areas for the 2015 Ozone NAAQS and took final action on designations on October 1, 2017, it would likely result in an effective date for designations some time in December 2017. That would create a problematic situation in which some potential nonattainment areas likely to be classified "Marginal" with year-round ozone seasons – like Houston (AQCR 216) and El Paso (AQCR 153) – would be required to attain the 2015 Ozone NAAQS by the end of the 2019 Ozone season, whereas other areas of the state – like San Antonio (AQCR 217) and Dallas-Fort Worth (AQCR 215) – would potentially have until the end of the 2020 Ozone season to attain the NAAQS since they have March 1 – November 30 ozone seasons under 40 CFR 58, Appendix D, Table D-3.

The timing of the initial area designations also causes a problem related to the designation of areas as "nonattainment" based on 2014-2016 ozone season data when, at the time the initial area designation action is taken, the area's 2017 ozone season may have already concluded. 42 U.S.C. §7407(d)(1)(A) refers to nonattainment areas as "any area that **does not meet** (or that contributes to ambient air quality in a nearby area that **does not meet**) the national primary or secondary air quality standard for the pollutant" (emphasis added). The present tense of this section suggests that an area should be designated only if it has air quality that is not attaining the standard **at the time the designation becomes effective**. For the 1997 and 2008 Ozone NAAQS, the effective date of designations occurred shortly after the deadline for certifying the prior year's ozone monitoring data, so this issue did not arise in the same way.

The cleanest way for EPA to address this uncertainty would be to invoke its authority under 42 U.S.C. §7407(d)(1)(B)(i) to postpone initial area designations by up to 1 year after the initial 2-year deadline "in the event the Administrator has insufficient information to promulgate the designations." EPA could postpone final action until June 2018, giving it a month after states are required to certify 2017 monitoring data to consider whether the area's air quality is "not attaining" the NAAQS at the time the designation is made. This would make the schedules more similar to the schedules used for the 1997 and 2008 Ozone NAAQS and would avoid potential court problems with being forced to use different data for different areas.

## 7 Summary & Conclusions

The overarching considerations for this analysis include the following questions:

1. Does the EPA's proposed approach achieve clean air as quickly as it could be achieved through other approaches?
2. Does the EPA's approach impose any unnecessary regulatory burdens?
3. Does the EPA's approach provide an equitable distribution of the regulatory burdens among nonattainment and attainment areas?

The analysis and comments above outline some specific alternative approaches to implementing the 2015 Ozone NAAQS that EPA could take to either achieve clean air quicker, reduce unnecessary regulatory burdens, or improve the equity in the distribution of regulatory burdens.

- ☐ Overall, a Subpart 1 implementation of the 2015 Ozone NAAQS for all nonattainment areas with a design value of 90 ppb or lower achieves clean air quicker with fewer unnecessary regulatory burdens, and a more equitable distribution of regulatory burdens among areas than the Subpart 2 implementation proposed by EPA, and is legally permissible under the Clean Air Act.
- ☐ If EPA does use Subpart 2 generally to implement the 2015 Ozone NAAQS for all areas, the EPA should consider making specific adjustments to the RFP and RACT requirements to avoid discouraging future voluntary action and an inefficient use of limited resources to address VOC emissions if areas have NO<sub>x</sub>-limited ozone formation. It is concerning that EPA's proposed approach could produce absurd results in some potential new nonattainment areas, including the San Antonio area.
- ☐ EPA's "Option 1" for revoking the 2008 Ozone NAAQS would unfairly allow existing nonattainment areas to postpone the implementation of emission reductions that will be necessary for those areas to attain the more stringent 2015 Ozone NAAQS. Continuing to implement the 2008 Ozone NAAQS in those areas under "Option 2" would achieve clean air quicker and more equitably than Option 1.
- ☐ EPA's proposed classification approach and requirements for SIP submissions set up too many areas to fail, and should be modified to move more areas into higher classifications and, where possible, require that states put all of the measures required for the next-higher classifications into the SIP as contingency measures rather than relying on the bump-up process to put those measures in place.
- ☐ EPA should proceed with its proposed approach to allow states to use 179B petitions for any area that can demonstrate that foreign air pollution makes up the difference between the area's design value and the area's attainment of the 2015 Ozone NAAQS, not just nonattainment areas adjacent to border areas. Alternatively, the EPA could take a more expansive interpretation of an "International Border Area" to include all areas of a state that borders a foreign country.
- ☐ EPA should take steps to ensure that there is clarity and consistency in which years of monitoring data will be used to determine if a nonattainment area has attained the 2015 Ozone NAAQS by its attainment date.

## 8 Selected References

AACOG. *Ozone Analysis – June 2006 Photochemical Modeling Episode*. Prepared for the Alamo Area Metropolitan Planning Organization. October 2015. Available online at:  
<http://aacog.com/DocumentCenter/View/34698>.

U.S. Environmental Protection Agency. *Equivalence of 1-hour and 8-Hour Ozone Design Values*. October 20, 2013. Office of Air Quality and Standards Emissions, Monitoring, and Analysis Division. Research Triangle Park, NC.

*Natural Resources Defense Council v. Environmental Protection Agency*. No. 12-1321. (D.C. Cir. 2014). Decided December 23, 2014. Available online at:  
[https://www.cadc.uscourts.gov/internet/opinions.nsf/E97A64FFBFE4DC1D85257DB70054D5EE/\\$file/12-1321-1528834.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/E97A64FFBFE4DC1D85257DB70054D5EE/$file/12-1321-1528834.pdf)

*Christine Todd Whitman, Administrator of the Environmental Protection Agency, et al. v. American Trucking Associations, Inc., et al.* 531 U.S. 457. Decided February 7, 2001.

*South Coast Air Quality Management District v. Environmental Protection Agency, et. al.* No. 04-1200. (D.C. Cir. 2006). Available online at:  
[https://www.cadc.uscourts.gov/internet/opinions.nsf/FF8CBAB385D3A9C285257440004511B0/\\$file/04-1200a.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/FF8CBAB385D3A9C285257440004511B0/$file/04-1200a.pdf). Accessed December 11, 2016.

*Natural Resources Defense Council et. al. v. Environmental Protection Agency et. al.* No. 08-1250. (D.C. Cir. 2013). Decided January 4, 2013. Available online at:  
[https://www.cadc.uscourts.gov/internet/opinions.nsf/5E67334CF6182C5E85257AE90054C0C1/\\$file/08-1250-1413399.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/5E67334CF6182C5E85257AE90054C0C1/$file/08-1250-1413399.pdf). Accessed December 11, 2016.

U.S. Environmental Protection Agency. "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard – Phase 1." *Federal Register Vol. 69, No. 84*. Pages 23951-24000. April 30, 2014. Available online at: <https://www.gpo.gov/fdsys/pkg/FR-2004-04-30/pdf/04-9153.pdf>. Accessed 12/11/16.

U.S. Environmental Protection Agency. "Response to Comments on Implementation of the 2008 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach, Attainment Deadlines, and Revocation of the 1997 Ozone Standards for Transportation Conformity Purposes." EPA-HQ-OAR-2010-0885. April 2012. Available online at:  
<https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2010-0885-0065&disposition=attachment&contentType=pdf>

**To:** Young, Carl[young.carl@epa.gov]  
**From:** Walker Williamson  
**Sent:** Wed 12/14/2016 8:10:31 PM  
**Subject:** RE: Recent and Upcoming TCEQ Actions for tomorrow's call

Thanks, Carl. I completely dropped the ball on the update.

#### Recent and Upcoming TCEQ Actions – TCEQ

- 30 TAC 114 Clean-up and Repeal of the VAVR Program – Adopted December 7
- HGB 2008 Ozone AD and RFP SIP Revisions – Adopted December 15
- VOC Storage Tank RACT Update Rule – Adopted December 15
- Rule Petition for 30 TAC 111.149(b) – Considered December 15
- 30 TAC 111.203 and 111.217 Outdoor Burning Rules – Proposal January 18
- o This rule project is managed by TCEQ's Office of Compliance and Enforcement

**From:** Young, Carl [mailto:young.carl@epa.gov]  
**Sent:** Wednesday, December 14, 2016 12:42 PM  
**To:** Walker Williamson <walker.williamson@tceq.texas.gov>  
**Subject:** Recent and Upcoming TCEQ Actions for tomorrow's call

Hi Walker,

From last month I have:

#### Recent and Upcoming TCEQ Actions – TCEQ

- HGB 2008 Ozone AD and RFP SIP Revisions – Adoption December 15
- VOC Storage Tank RACT Update Rule – Adoption December 15

- Rule Petition for 30 TAC 111.149(b) – Commission Consideration December 15
- 30 TAC 111.203 and 111.217 Outdoor Burning Rules – Proposal January 18
- o This rule project is managed by TCEQ's Office of Compliance and Enforcement

Please let me know if you would like any changes for tomorrow's agenda.

Also – we plan to discuss the recent Regional Haze proposal that was signed.

Carl

Carl Young

EPA Region 6 Air Quality Program

(214) 665-6645

**To:** Weber, Gina[Weber.Gina@epa.gov]; Acevedo, Janie[acevedo.janie@epa.gov]; Fanning, Cynthia[fanning.cynthia@epa.gov]; Bokun, Lisa[Bokun.Lisa@epa.gov]  
**From:** Young, Carl  
**Sent:** Fri 2/10/2017 3:08:03 PM  
**Subject:** FW: Federal Register Action Signed  
FRN\_TX\_comment\_period.docx

Hi folks,

Wren digitally signed the Texas regional haze comment period extension yesterday.

The WORD document she signed is attached.

Carl

Carl Young

EPA Region 6 Air Quality Program

(214) 665-6645

**From:** Region 6 Air Branch Regulations Site [mailto:no-reply@sharepointonline.com]  
**Sent:** Thursday, February 09, 2017 5:19 PM  
**To:** Stenger, Wren <stenger.wren@epa.gov>  
**Cc:** Coleman, Sam <Coleman.Sam@epa.gov>; Gray, David <gray.david@epa.gov>; Taheri, Diane <Taheri.Diane@epa.gov>; Price, Lisa <Price.Lisa@epa.gov>; Donaldson, Guy <Donaldson.Guy@epa.gov>; Robinson, Jeffrey <Robinson.Jeffrey@epa.gov>; Stanton, Marya <Stanton.Marya@epa.gov>; Verhalen, Frances <verhalen.frances@epa.gov>; Young, Carl <young.carl@epa.gov>; Paige, Carrie <Paige.Carrie@epa.gov>; Mohr, Ashley <Mohr.Ashley@epa.gov>; Riley, Jeffrey <Riley.Jeffrey@epa.gov>; Steib, Clovis <steib.clovis@epa.gov>; Smith, Suzanne <Smith.Suzanne@epa.gov>; Wiley, Adina <Wiley.Adina@epa.gov>  
**Subject:** Federal Register Action Signed

The Federal Register titled FRN\_TX\_comment\_period.docx has been digitally signed using the GSA PKCS#7 Signing Tool by Multimedia Division Director

Stenger, Wren on Thursday, February 9, 2017.

Please contact Adina Wiley, Ashley Mohr, Carrie Paige or Carl Young if you have any questions. We are here to help!

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R06–OAR–2016–0611; FRL–9959–42–Region 6]**

**Promulgation of Air Quality Implementation Plans; State of Texas; Regional Haze and  
Interstate Visibility Transport Federal Implementation Plan**

**AGENCY:** Environmental Protection Agency (EPA)

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** In the January 4, 2017 **Federal Register**, the Environmental Protection Agency (EPA) requested comments by March 6, 2017 on a proposed rule pertaining to Clean Air Act requirements for regional haze and interstate visibility transport. This proposal would promulgate a Federal Implementation Plan (FIP) to address the Clean Air Act requirement for eligible electric generating units (EGUs) in Texas to install and operate the Best Available Retrofit Technology (BART). This proposal would also disapprove a portion of the Texas State Implementation Plan (SIP) that evaluated BART for Particulate Matter (PM) at EGUs. In addition, this proposal reconsiders earlier disapprovals of portions of several SIP revisions submitted to satisfy the requirement to address interstate visibility transport for six National Ambient Air Quality Standards (NAAQS), newly proposing that they be disapproved and that the proposed EGU BART FIP would satisfy any FIP obligation for interstate visibility transport that would follow from those disapprovals. EPA is extending the public comment period for this proposal until April 5, 2017.



**DATES:** Written comments must be received on or before April 5, 2017.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2016-0611, at <http://www.regulations.gov> or via email to [R6\\_TX-BART@epa.gov](mailto:R6_TX-BART@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Joe Kordzi, 214-665-7186, [Kordzi.joe@epa.gov](mailto:Kordzi.joe@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

The Texas regional haze SIP is available online at:

[https://www.tceq.texas.gov/airquality/sip/bart/haze\\_sip.html](https://www.tceq.texas.gov/airquality/sip/bart/haze_sip.html). It is also available for public inspection during official business hours, by appointment, at the Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Joe Kordzi, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-7186; fax number 214-665-7263; email address *Kordzi.joe@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

On January 4, 2017, we published in the **Federal Register** a proposed rule pertaining to regional haze and interstate visibility transport (82 FR 912). Specifically, we proposed to (1) partially disapprove a portion of the Texas SIP pertaining to the PM BART requirement for EGUs, (2) address the BART requirement for Texas EGUs through a FIP including source-specific BART limits on 29 EGUs for PM and sulfur dioxide (SO<sub>2</sub>) and a finding that NO<sub>x</sub> BART for EGUs in Texas is met by participation in the Cross-State Air Pollution Rule (CSAPR), (3) reconsider and re-propose disapproval of portions of several SIP revisions submitted to satisfy the requirement to address interstate visibility transport for six NAAQS, and (4) determine that the proposed BART FIP emission limits would meet the interstate visibility transport requirements for these NAAQS, satisfying any FIP obligations that would follow from disapprovals of the SIP revisions on requirements to address interstate visibility transport. We received several requests for an extension of the comment period and, in response, have decided

to allow an additional 30 days. We are extending the comment period to April 5, 2017.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Interstate transport of pollution, Regional haze, Best available control technology.

**Authority**

42 U.S.C. 7401 *et seq.*

Dated: February 9, 2017.

**Wren Stenger,**

*Multimedia Division Director, Region 6.*

**To:** Stackhouse, Butch[Stackhouse.Butch@epa.gov]  
**Cc:** Mills, Derek[Mills.Derek@epa.gov]; Robinson, Jeffrey  
(Robinson.Jeffrey@epa.gov)[Robinson.Jeffrey@epa.gov]; Adina Wiley[wiley.adina@epa.gov];  
Schoellkopf, Lynde[Schoellkopf.Lynde@epa.gov]  
**From:** Young, Carl  
**Sent:** Tue 1/3/2017 6:19:44 PM  
**Subject:** RE: We received the Houston Attainment Demonstration SIP today  
HGB 2016 AD SIP.pdf

Yes. Attached please find a copy.

Carl

Carl Young

EPA Region 6 Air Quality Program

(214) 665-6645

**From:** Stackhouse, Butch  
**Sent:** Tuesday, January 03, 2017 11:56 AM  
**To:** Young, Carl <young.carl@epa.gov>  
**Cc:** Mills, Derek <Mills.Derek@epa.gov>  
**Subject:** RE: We received the Houston Attainment Demonstration SIP today

Can we get a copy of the file from TCEQ.

**From:** Young, Carl  
**Sent:** Friday, December 30, 2016 2:09 PM  
**To:** Wiley, Adina <Wiley.Adina@epa.gov>; Salem, Nevine <Salem.Nevine@epa.gov>;  
Schoellkopf, Lynde <Schoellkopf.Lynde@epa.gov>; Jones, Bruce <Jones.Bruce@epa.gov>;  
Wood, Anna <Wood.Anna@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>; Rao, Raj  
<Rao.Raj@epa.gov>; Brachtel, Megan <Brachtel.Megan@epa.gov>; Stackhouse, Butch  
<Stackhouse.Butch@epa.gov>; Dail, Lynn <Dail.Lynn@epa.gov>; Smith, Kristi  
<Smith.Kristi@epa.gov>; Mills, Derek <Mills.Derek@epa.gov>; Stenger, Wren  
<stenger.wren@epa.gov>; Hansen, Mark <Hansen.Mark@epa.gov>; Stanton, Marya  
<Stanton.Marya@epa.gov>; Donaldson, Guy <Donaldson.Guy@epa.gov>; Smith, Suzanne  
<Smith.Suzanne@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Verhalen, Frances  
<verhalen.frances@epa.gov>; Robinson, Jeffrey <Robinson.Jeffrey@epa.gov>  
**Subject:** We received the Houston Attainment Demonstration SIP today

Just a quick note that we received the Houston Attainment Demonstration SIP today.

Carl

Carl Young

EPA Region 6 Air Quality Program

(214) 665-6645

**From:** Young, Carl

**Sent:** Thursday, December 15, 2016 1:22 PM

**To:** Stenger, Wren <[stenger.wren@epa.gov](mailto:stenger.wren@epa.gov)>; Hansen, Mark <[Hansen.Mark@epa.gov](mailto:Hansen.Mark@epa.gov)>; Stanton, Marya <[Stanton.Marya@epa.gov](mailto:Stanton.Marya@epa.gov)>; Guy Donaldson <[Donaldson.Guy@epa.gov](mailto:Donaldson.Guy@epa.gov)>; Robinson, Jeffrey ([Robinson.Jeffrey@epa.gov](mailto:Robinson.Jeffrey@epa.gov)) <[Robinson.Jeffrey@epa.gov](mailto:Robinson.Jeffrey@epa.gov)>; Smith, Suzanne <[Smith.Suzanne@epa.gov](mailto:Smith.Suzanne@epa.gov)>; Adina Wiley <[wiley.adina@epa.gov](mailto:wiley.adina@epa.gov)>; Salem, Nevine <[Salem.Nevine@epa.gov](mailto:Salem.Nevine@epa.gov)>; Schoellkopf, Lynde <[Schoellkopf.Lynde@epa.gov](mailto:Schoellkopf.Lynde@epa.gov)>; Jones, Bruce <[Jones.Bruce@epa.gov](mailto:Jones.Bruce@epa.gov)>; Wood, Anna <[Wood.Anna@epa.gov](mailto:Wood.Anna@epa.gov)>; Mathias, Scott <[Mathias.Scott@epa.gov](mailto:Mathias.Scott@epa.gov)>; Rao, Raj <[Rao.Raj@epa.gov](mailto:Rao.Raj@epa.gov)>; Brachtl, Megan <[Brachtl.Megan@epa.gov](mailto:Brachtl.Megan@epa.gov)>; Stackhouse, Butch <[Stackhouse.Butch@epa.gov](mailto:Stackhouse.Butch@epa.gov)>; Dail, Lynn <[Dail.Lynn@epa.gov](mailto:Dail.Lynn@epa.gov)>; Smith, Kristi <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)>; Mills, Derek <[Mills.Derek@epa.gov](mailto:Mills.Derek@epa.gov)>

**Subject:** FW: HGB Attainment Demonstration and Reasonable Further Progress SIP Revisions for the 2008 Ozone NAAQS

Below please find notification that the Houston SIP revisions were adopted by TCEQ today.

Carl

Carl Young

EPA Region 6 Air Quality Program

(214) 665-6645

**From:** Texas Commission on Environmental Quality [<mailto:tceq@service.govdelivery.com>]  
**Sent:** Thursday, December 15, 2016 11:52 AM  
**To:** Young, Carl <[young.carl@epa.gov](mailto:young.carl@epa.gov)>  
**Subject:** HGB Attainment Demonstration and Reasonable Further Progress SIP Revisions for the 2008 Ozone NAAQS

On December 15, 2016, the commission adopted two revisions to the Texas SIP for the Houston-Galveston-Brazoria (HGB) 2008 eight-hour ozone NAAQS nonattainment area: the HGB Attainment Demonstration SIP Revision for the 2008 Eight-Hour Ozone Standard (Non-Rule Project No. 2016-016-SIP-NR) and the HGB Reasonable Further Progress SIP Revision for the 2008 Eight-Hour Ozone Standard (Non-Rule Project No. 2016-017-SIP-NR). The AD SIP revision incorporates [revisions to 30 Texas Administrative Code Chapter 115](#).

- [Attainment Demonstration SIP Revision](#)
- [Reasonable Further Progress SIP Revision](#)

For additional information, please visit the [HGB: Latest Ozone Planning Activities](#) Web page.

You are subscribed to SIP Hot Topics (State Implementation Plan) for the Texas Commission on Environmental Quality. This information has recently been updated, and is [now available](#).

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This service is provided to you at no charge by the Texas Commission on Environmental Quality. Visit us on the Web at [www.tceq.texas.gov](http://www.tceq.texas.gov).

**How is our customer service?** Fill out our online customer satisfaction survey at [www.tceq.texas.gov/goto/customersurvey](http://www.tceq.texas.gov/goto/customersurvey).

---

This email was sent to [young.carl@epa.gov](mailto:young.carl@epa.gov) using GovDelivery, on behalf of: Texas Commission on Environmental Quality · 12100 Park 35 Circle · Austin TX 78753 · 512-239-1000

**To:** Walker Williamson[walker.williamson@tceq.texas.gov]; 'Kristin Patton'[Kristin.Patton@tceq.texas.gov]; donna.huff@tceq.texas.gov[donna.huff@tceq.texas.gov]; 'Vincent Meiller'[vincent.meiller@tceq.texas.gov]; Kim Herndon[Kim.Herndon@tceq.texas.gov]  
**From:** Young, Carl  
**Sent:** Fri 12/9/2016 9:19:29 PM  
**Subject:** Prepublication copy of the Texas Regional Haze BART proposal  
[Prepublication copy TX BART FIP proposal.pdf](#)

The EPA Region 6 Regional Administrator, Ron Curry, signed a proposed rule on December 9, 2016, and EPA is submitting it for publication in the Federal Register (FR). A prepublication copy is attached.

While we have taken steps to ensure the accuracy of this proposal, it is not the official version for purposes of public comment. Please refer to the official version in a forthcoming Federal Register publication, which will appear on the Government Printing Office's FDsys website (<https://www.gpo.gov/fdsys/search/home.action>), Regulations.gov (<http://www.regulations.gov>), and in the EPA section of the FR website (<https://www.federalregister.gov/agencies/environmental-protection-agency>) in Docket No. EPA-R06-OAR-2016-0611.

Carl Young

EPA Region 6 Air Quality Program

(214) 665-6645

**To:** Walker Williamson[walker.williamson@tceq.texas.gov]; 'Kristin Patton'[Kristin.Patton@tceq.texas.gov]; donna.huff@tceq.texas.gov[donna.huff@tceq.texas.gov]; 'Vincent Meiller'[vincent.meiller@tceq.texas.gov]  
**Cc:** Carrie Paige[paide.carrie@epa.gov]  
**From:** Young, Carl  
**Sent:** Thur 12/8/2016 4:45:00 PM  
**Subject:** FW: today's FR: Transport of Fine PM: Revision of FIP for TX; extension of comment period

Carrie noted that the comment period for the TX EGU annual SO2 and NOx budget remand was extended.

Carl

Carl Young

EPA Region 6 Air Quality Program

(214) 665-6645

**From:** Paige, Carrie  
**Sent:** Thursday, December 08, 2016 8:43 AM  
**To:** Young, Carl <young.carl@epa.gov>  
**Subject:** today's FR: Transport of Fine PM: Revision of FIP for TX; extension of comment period

Wanted to make sure you saw this -

Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas AGENCY: Environmental Protection Agency (EPA). ACTION: Proposed rule; extension of comment period.

<https://www.gpo.gov/fdsys/pkg/FR-2016-12-08/pdf/2016-29442.pdf>



**Carrie Paige**

Environmental Scientist

US EPA Region 6

State Implementation Section (6MM-AB)

1445 Ross Avenue, Suite 1200

Dallas, TX 75202

**(214) 665-6521**

POSITIONS OR VIEWS EXPRESSED DO NOT REPRESENT OFFICIAL EPA POLICY

**To:** Dunham, Sarah[Dunham.Sarah@epa.gov]  
**From:** Lewis, Josh  
**Sent:** Wed 5/24/2017 4:51:18 PM  
**Subject:** Re: Meeting on TX Issues

No idea. I just told her you were planning to talk to sam and left it at that. So let's see what he says when you talk to him later today and go from there.

On May 24, 2017, at 12:42 PM, Dunham, Sarah <[Dunham.Sarah@epa.gov](mailto:Dunham.Sarah@epa.gov)> wrote:

I still am not clear who is being asked to do what. We can always schedule something, but who is doing the actual thinking and briefing putting together?

**From:** Lewis, Josh  
**Sent:** Wednesday, May 24, 2017 12:14 PM  
**To:** Dunham, Sarah <[Dunham.Sarah@epa.gov](mailto:Dunham.Sarah@epa.gov)>  
**Subject:** Fwd: Meeting on TX Issues

here's the email from kristi I referenced at RT this am

Begin forwarded message:

**From:** "Smith, Kristi" <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)>  
**Date:** May 22, 2017 at 3:24:02 PM EDT  
**To:** "Lewis, Josh" <[Lewis.Josh@epa.gov](mailto:Lewis.Josh@epa.gov)>  
**Subject:** Meeting on TX Issues

Josh -

Per the message below, we were discussed Texas issues with Justin Schwab today. He would like to make sure we get a meeting on the calendar early next week to have an HQ discussion about the process and potential options for going forward with the big picture discussion with Texas (and potentially TX EGUs).

<b>Ex. 5 - Deliberative Process</b>	<b>Ex. 5 - Deliberative Process</b>
<b>Ex. 5 - Deliberative Process</b>	Do you have the information you need to put together such a briefing or do you more info from OGC, OAQPS, and CAMD?

- Kristi

Kristi M. Smith \* Asst. General Counsel \* US EPA, Office of General Counsel  
\* [smith.kristi@epa.gov](mailto:smith.kristi@epa.gov) \* (202) 564-3068\*

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Sent from my iPhone

On May 18, 2017, at 8:48 AM, Gunasekara, Mandy <[Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)> wrote:

Let's go ahead and set up an HQ meeting. Sarah, can you/OAR take the lead on setting up logistics?

Sam, can you confirm with the state the scope of the meeting –should we plan to discuss all of their issues or only a certain portion of the issues (if so, which ones).

**From:** Coleman, Sam  
**Sent:** Thursday, May 11, 2017 3:25 PM  
**To:** Schwab, Justin <[schwab.justin@epa.gov](mailto:schwab.justin@epa.gov)>  
**Cc:** Schmidt, Lorie <[Schmidt.Lorie@epa.gov](mailto:Schmidt.Lorie@epa.gov)>; Gunasekara, Mandy <[Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)>; Minoli, Kevin <[Minoli.Kevin@epa.gov](mailto:Minoli.Kevin@epa.gov)>; Dunham, Sarah <[Dunham.Sarah@epa.gov](mailto:Dunham.Sarah@epa.gov)>; Payne, James <[payne.james@epa.gov](mailto:payne.james@epa.gov)>; Stenger, Wren <[stenger.wren@epa.gov](mailto:stenger.wren@epa.gov)>; Gray, David <[gray.david@epa.gov](mailto:gray.david@epa.gov)>; Smith, Kristi <[Smith.Kristi@epa.gov](mailto:Smith.Kristi@epa.gov)>  
**Subject:** Re: Texas Issues

Thanks

Samuel Coleman, P. E.,

Deputy Regional Administrator

214.665.2100 Ofc

214.665. 3110 Desk

214.665.2016 Cell

[Coleman.sam@epa.gov](mailto:Coleman.sam@epa.gov)

Sent from my iPhone

On May 11, 2017, at 2:08 PM, Schwab, Justin <[schwab.justin@epa.gov](mailto:schwab.justin@epa.gov)> wrote:

That all sounds good. Lorie, please inform DOJ.

I think we can do a meeting in the near future at HQ as well.

Sent from my iPhone

On May 11, 2017, at 3:06 PM, Coleman, Sam <[Coleman.Sam@epa.gov](mailto:Coleman.Sam@epa.gov)> wrote:

Just got off the phone with TCEQ. They are all in favor of holding the Ozone Transport issue in abeyance.

They are working on a path forward for a variety of issues not exclusive to Ozone and would like a meeting with HQ in the near future.

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Sent from my iPhone

On May 10, 2017, at 5:10 PM, Schmidt, Lorie  
<Schmidt.Lorie@epa.gov> wrote:

Sam

Any news from TCEQ? Ex. 5 - Attorney Work Product , Attorney Client

**Ex. 5 - Attorney Work Product, Attorney Client**

Thanks

Lorie

Lorie Schmidt

Associate General Counsel, Air and Radiation

Office of General Counsel

US Environmental Protection Agency

(202)564-1681

**From:** Coleman, Sam

**Sent:** Monday, May 08, 2017 5:53 PM

**To:** Schmidt, Lorie <Schmidt.Lorie@epa.gov>

**Cc:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>;

Schwab, Justin <schwab.justin@epa.gov>; Minoli, Kevin

<Minoli.Kevin@epa.gov>; Dunham, Sarah

<[Dunham.Sarah@epa.gov](mailto:Dunham.Sarah@epa.gov)>; Payne, James  
<[payne.james@epa.gov](mailto:payne.james@epa.gov)>; Stenger, Wren  
<[stenger.wren@epa.gov](mailto:stenger.wren@epa.gov)>; Gray, David <[gray.david@epa.gov](mailto:gray.david@epa.gov)>  
**Subject:** RE: Texas Issues

OK

Samuel Coleman, P.E.

Deputy Regional Administrator

EPA Region 6

[coleman.sam@epa.gov](mailto:coleman.sam@epa.gov)

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**From:** Schmidt, Lorie  
**Sent:** Monday, May 08, 2017 4:28 PM  
**To:** Coleman, Sam <[Coleman.Sam@epa.gov](mailto:Coleman.Sam@epa.gov)>  
**Cc:** Gunasekara, Mandy <[Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)>;  
Schwab, Justin <[schwab.justin@epa.gov](mailto:schwab.justin@epa.gov)>; Minoli, Kevin  
<[Minoli.Kevin@epa.gov](mailto:Minoli.Kevin@epa.gov)>; Dunham, Sarah  
<[Dunham.Sarah@epa.gov](mailto:Dunham.Sarah@epa.gov)>; Payne, James  
<[payne.james@epa.gov](mailto:payne.james@epa.gov)>; Stenger, Wren  
<[stenger.wren@epa.gov](mailto:stenger.wren@epa.gov)>; Gray, David <[gray.david@epa.gov](mailto:gray.david@epa.gov)>  
**Subject:** Re: Texas Issues

Thanks, Sam.

Once you hear from the commissioners, please let OGC know.  
Assuming they agree with the Executive Director, we will then  
contact DOJ so that we can seek Texas' agreement to request that  
the litigation be held in abeyance.

Lorie

On May 8, 2017, at 11:43 AM, Coleman, Sam  
<[Coleman.Sam@epa.gov](mailto:Coleman.Sam@epa.gov)> wrote:

Thanks. There is a filing deadline on 2008 Ozone Transport SIP litigation imposed by DOJ of this Friday (12 May). As this relates to TX, I recommend that we seek an abeyance will allow these discussions to take place. I

**Ex. 5 - Deliberative Process**

## Ex. 5 - Deliberative Process

Samuel Coleman, P.E.

Deputy Regional Administrator

EPA Region 6

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**From:** Gunasekara, Mandy

**Sent:** Thursday, May 04, 2017 12:31 PM

**To:** Schwab, Justin <[schwab.justin@epa.gov](mailto:schwab.justin@epa.gov)>

**Cc:** Coleman, Sam <[Coleman.Sam@epa.gov](mailto:Coleman.Sam@epa.gov)>; Schmidt, Lorie  
<[Schmidt.Lorie@epa.gov](mailto:Schmidt.Lorie@epa.gov)>; Minoli, Kevin

<[Minoli.Kevin@epa.gov](mailto:Minoli.Kevin@epa.gov)>; Dunham, Sarah

<[Dunham.Sarah@epa.gov](mailto:Dunham.Sarah@epa.gov)>; Payne, James

<[payne.james@epa.gov](mailto:payne.james@epa.gov)>; Stenger, Wren

<[stenger.wren@epa.gov](mailto:stenger.wren@epa.gov)>; Gray, David <[gray.david@epa.gov](mailto:gray.david@epa.gov)>

**Subject:** Re: Texas Issues

Yes- let's do it

Sent from my iPhone

On May 4, 2017, at 12:53 PM, Schwab, Justin  
<[schwab.justin@epa.gov](mailto:schwab.justin@epa.gov)> wrote:

For my part this sounds worth considering; I will be interested  
in hearing other people's views, however.

Sent from my iPhone

On May 4, 2017, at 11:13 AM, Coleman, Sam  
<[Coleman.Sam@epa.gov](mailto:Coleman.Sam@epa.gov)> wrote:

Last summer EPA, TCEQ and the EGU owners in TX  
met to attempt global settlement on Haze and on a couple  
of related issues, e.g., Compliance issues related to

**Ex. 5 - Attorney Client, Attorney Work Product, Deliberative Process**

Given the current situation, I was wondering if EPA  
might be interested in having a thoughtful and organized  
discussion with the state, and the EGUs.

**Ex. 5 - Deliberative Process**

**Ex. 5 - Deliberative Process**



Is EPA interested in convening such a meeting? If so, I would like to schedule a call to discuss format and logistics. Please let me know.

Samuel Coleman, P. E.,

Deputy Regional Administrator

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Sent from my iPhone